

**Developing professional judgement in the legal
profession: the use of the Professional Education
and Training Programme (PEAT 2) in selected
Scottish law firms**

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**Developing professional judgement in the legal
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Scottish law firms**

Fiona Anne Westwood

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Abstract

Developing professional judgement in the legal profession: the use of the Professional Education and Training Programme (PEAT 2) in selected Scottish law firms

Fiona Anne Westwood

The objective of this research is to evaluate the effectiveness of the development of professional judgement during the two year work-based pre-admission training period (PEAT 2) required of Scottish solicitors so as to identify a model that allows them to respond to the changes the UK legal services sector is experiencing. The methodology adopted throughout reflects an emphasis on researching knowledge in the context of its application (Flyvbjerg 2001). Professional judgement is described as the ‘heart of professional practice’ (Fish and Coles 1998) and is therefore selected to provide a holistic method of evaluation. The UK legal profession is fragmenting in its response to market pressures, including the introduction of external regulation and ‘alternative business structures’ under the Legal Services Act 2007 and increased globalisation, specialisation and commoditisation. It is therefore important to identify the traditional method used by Scottish solicitors to develop their judgement as there is a risk that what was previously implicit and assumed in this ‘community of practice’ (Wenger 1998) becomes dissipated. As a result, the relevance and application of judgement is considered in the context of professional practice and solicitors in particular. The effect of external influences are interpreted, including in relation to the job of a solicitor, the future development of

judgement and implications for legal education. The research method adopted enables confidential data to be obtained about the development of professional judgement and the PEAT 2 processes through completion of semi-structured interviews with a number of Scottish law firms, the Law Society of Scotland and related regulatory organisations, supplemented with Scottish trainee focus groups and comparative data from illustrative law firms and regulators in England and Wales. This allows 10 detailed case studies of law firms to be developed and analysed using Eraut's (2007) model of early career learning and Fuller and Unwin's (2003) model of expansive and restrictive apprenticeships as well as providing commentary from experienced solicitors and regulatory sources on the development of professional judgement. This data enables an analysis of the effectiveness of the current Scottish pre-admission training processes and the identification of methods used to develop the judgement of novices. Findings indicate that elements of the formal requirements of PEAT 2 are limiting the experiential and reflective learning of trainees and, in the wider context of work-based learning, that professional judgement is developed through exposure to reflective practice in a 'community' that provides an expansive apprenticeship and establishes parameters of acceptable choices. Recommendations include adjustments to pre-admission legal training and the introduction of a specialist qualification, accredited by the Law Society of Scotland.

Summary of portfolio

I have been a member of the Scottish legal profession since 1974, working in private practice until 1992 and since then as a management consultant concentrating on supporting professional firms improve their

strategy, client relationships, leadership and people management. In 1998, I completed a Master's degree in Entrepreneurial Studies at the University of Stirling where the focus of my research was to determine a business model for professional partnerships. Since 2000, as a tutor and senior lecturer at the University of Strathclyde and currently the Director of Continuing Professional Education at the University of Glasgow, I have also been involved in the design and delivery of the education and training of vocational law students and trainee solicitors and have completed a number of research projects for the Law Society of Scotland, including as CPD Project Leader on their Education and Training Review. My submissions in relation to Research Methods for Work Based Learning (IS7 010), Negotiated Experiential Learning Modules (IS7 011) and Minor Practitioner Research Project (IS8 002) took the form of APCL and APEL claims based on my previous published works on leadership and management in professional service organisations, vocational skill development and personal resilience. My Personal and Professional Review (IS7 508) and Negotiated Programme Learning Agreement determined that I would concentrate the research for my Doctor of Professional Studies on investigating how professional judgement is described in academic theories and models and how it is developed in practice, with particular emphasis on novice solicitors. This focus on new entrants to a professional community indicated that it would be relevant to consider social learning theories, such as described by Eraut (2007) and Wenger (2009) as well as the influence on the formation of identity of early years of practice, as offered, for example, by Faulconbridge and Muzio (2010).

One of the drivers behind my undertaking my Doctorate at this time is that the legal profession is experiencing potentially disruptive changes as

a result of increasing globalisation, consumerism and commoditisation of legal services as well as the opening up of this market to new entrants and trading structures. My concern is that the traditional method of inducting novices into the profession through completion of routine and low risk work under the direct supervision of an experienced practitioner can no longer be assumed and that any adapted training structure must provide new entrants with the knowledge, skills and attributes to respond to the changing demands on their service provision. My Practitioner Enquiry at Doctoral Level (IS8 001) focussed on considering the inter-relationship between the exercise of judgement and professional practice and determined the method adopted for my Major Practitioner Research Project (IS8 003) which is the subject of this thesis.

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Glossary of Terms

CAB Citizens Advice Bureau

DPLP Diploma in Professional Legal Practice, the legal vocational course (Scotland)

CILEx Chartered Institute of Legal Executives

LSB Legal Services Board

LPC Legal Practice Course, the legal vocational course (England and Wales)

LO Learning Outcomes

LS The Law Society (of England and Wales)

LSS The Law Society of Scotland

PEAT Professional Education and Training Programme for Scottish solicitors

PEAT 1 the process and learning outcomes for the DPLP

PEAT 2 the process and learning outcomes for two year work-based training period in Scotland

PQPR PEAT 2 Quarterly Performance Review

QLD Qualifying Law Degree (in England and Wales)

SLCC Scottish Legal Complaints Commission

SRA Solicitors Regulation Authority

TCPD the Trainee Continuing Professional Development Programme in Scotland

Chapter 1 Introduction

This chapter sets out the objectives of the research and the structure of this thesis. It details how the legal profession in the UK is currently structured and how law firms operate as well as explaining the processes involved in the formal education and pre-admission training of solicitors and recent consultations in relation to current and future trends.

Section 1 Objective of the research

The objective of this research is to evaluate the effectiveness of the development of professional judgement during the two year work-based pre-admission training period required of Scottish solicitors so as to identify a model that allows them to respond to the changes the UK legal services sector is experiencing.

Like all professional groups, lawyers' claims to status and reward are based upon their access to an exclusive body of knowledge and practice gained through formal education and training (Larson 1977, Collins 1990). In a world where formerly privileged information is now widely and freely accessible (Susskind 1996, 2000), the legal profession's special status ultimately rests upon its ability to mediate such information in ways which best suit the interests of its clients (Goriely 1994). To contextualise the application of law in this way requires the exercise of professional judgement which is therefore central to its continuation as a distinct and recognisable profession (Fish and Coles 1998). My concern is that the combination of recent regulatory changes brought about by the Legal Services Act 2007 allowing new business structures and marketplace trends, such as increasing complexity of legal interactions resulting from a global economy (Galanter 1983, 2011, Flood 1996, 2011(b), Empson 2007) and the use of information

technology to commoditise routine legal work (Susskind 2008), is changing the way that legal work is done and as a result, how novices can be supported in the development of their judgement.

I have chosen as the focus of this research the Scottish legal profession as I have been an active member of it for 40 years as well as directly involved in the design and delivery of the education and training of vocational law students and trainee solicitors in Scotland. Not only does this provide me with an understanding of educational theory and its application in practice, it also enables me to access confidential data that would be difficult for a non-member of this ‘community of practice’ to obtain (Wenger 1998, Costley 2013). The immediate aim of the research is to investigate with others whether my concern is justified by considering the effectiveness of the current methods used in Scotland to support the development of professional judgement prior to admission as a solicitor. I have therefore analysed the effects of current marketplace trends on the work of lawyers and the recently introduced enhancement of the formal training programme imposed by the Law Society of Scotland (LSS) on all trainees. To enable comparisons to be made in relation to the effects of these trends as well as to pre-admission legal training, I have included data obtained from a sample of law firms situated in England and Wales who operate a similar formal two year period of training prior to admission. My research questions include:

- (a) how is professional judgement described in theory and in practice?
- (b) how effective are the PEAT 2 processes in relation to the development of professional judgement?

Based on the results of my research, I offer commentary on the effectiveness of these current processes and the importance of the

exercise of judgement in professional practice and make recommendations in relation to these.

Before proceeding further it is appropriate to set out the ontological and epistemological perspectives of this thesis. The starting point for this investigation is rooted in my professional experience as a lawyer, author, teacher and trainer. As a result, I cannot disavow my own ideological convictions, knowledge and experiences so I do not claim that the work represents a neutral, objective, scientific perspective. As Costley and Armsby (2010), Walsh (2011) and Costley (2015) affirm, practitioners consciously create new practice knowledge and my motivation to generate this is rooted in my personal experience. The basis of my positionality stems from my intention to offer a bridge between theory and practice by focussing on the ‘presenting problem and its consequences’ (Gibbs 2015: 154). I seek to test the application of theory to the realities of practice (Walsh 2011) and as a result, inform both. Academic researchers, such as Flyvbjerg (2001), argue that social scientists should develop an approach based upon Aristotle’s concept of phronesis approach to generate practical knowledge and discover principles by which practice operates as the basis for its improvement. In the past twenty years, along with others in my profession, I have witnessed changes to the traditional forms of law firms and work practices as a result of increasing globalisation, consumerism and commoditisation of legal services as well as the opening up of this market to new entrants and trading structures. In my view professional judgement is central to the claim of lawyers to provide a uniquely valuable service. At the same time as the work-based methods of developing judgement are altering, formal learning in pre-qualification professional programmes, such as PEAT 2, have not articulated its

importance in future practice. This thesis is therefore influenced by my desire to see the legal profession acknowledge the importance of professional judgement in the development of its novice practitioners. In adopting such a stance I recognise that I am attempting to 'inhabit the hyphen' (Drake and Heath 2011) and address the needs of both a practitioner and academic audience.

A practice perspective not only has implications for the ontology but also epistemology. In practice-based research the choice of method is determined by selecting mechanisms relevant to the questions to be answered, so that it is common to use investigative techniques drawn from a variety of contexts that Walsh (2011) and others call 'bricolage'. To achieve the objective of my research, I have used methods suited to obtaining data relating to people's experiences (Kvale and Brinkmann 2009). In particular, I have chosen semi-structured interviews and focus groups to allow me to investigate how lawyers describe judgement and the effectiveness of the PEAT 2 programme in relation to pre-admission learning.

Section 2 Thesis structure

Chapter 1 serves as an introduction by providing information about the UK legal profession, its size and contribution to the economy, the way it has operated in the past and the changes that have been imposed on it following the Clementi Report (Clementi 2004). It also explains the business and operational structures used by solicitors in the two distinct legal jurisdictions of Scotland and England and Wales as well as their education and training processes.

Chapter 2 gathers evidence of theories underpinning the concept of ‘professional judgement’ and considers its relevance in the context of functioning as a lawyer. It looks at how judgement is developed in practice through an apprenticeship model embedded in a ‘community of practice’ that imposes norms and standards of behaviour. As a result, it identifies the underpinning elements required of pre-admission legal education and training.

Chapter 3 analyses the external drivers for change affecting the legal profession in the UK and the implications of these for the role of a solicitor including ‘having a calling’ and in relation to the current methods employed to develop professional judgement in education and practice.

To ensure validity and reliability of the data obtained during this research (Yin 2009), Chapter 4 explains the rationale underpinning the methodology adopted, including the use of case studies and semi-structured interviews and addresses issues of access to data, confidentiality and ethics as well as the limitations of the research. I also describe how the research was undertaken, the selection of the case studies and detail the contributors to the data obtained.

Chapters 5 and 6 analyse the data in relation to professional judgement obtained from law firms, focus groups and UK legal professional bodies, regulators and related organisations. In particular, data collected from seven Scottish case study firms supplemented by three English regional firms is analysed employing Fuller and Unwin’s (2003) apprenticeship model and Eraut’s (2007) model of early career work-based learning.

The final chapter reviews the overall results of the research and determines Findings in relation to the importance and the development of professional judgement. Based on these it offers Recommendations to improve the effectiveness of the current Scottish pre-admission processes as well as devising a new model to ensure that admitted members have the necessary knowledge, skills and abilities to allow them to respond to the demands of their future legal practice.

Section 3 An introduction to the UK legal profession

(a) Sector structure and size

The legal services market is a generic term that includes many aspects of commercial advice that can be considered part of the domain of other professions, especially accountants and financial services advisors. In addition, a number of professionals work in this sector including patent agents, arbiters and licensed conveyancers. The unique role of the legal profession relates to the provision of ‘access to justice’ (Rueshmeyer 1969) with lawyers providing legal advice and representation to private individuals and commercial, public and not-for-profit organisations in connection with the application of the law or any form of resolution of legal disputes. This includes all aspects of the law of family, welfare, contract, employment, company, intellectual property, conveyancing, crime and wills.

The profession is divided into two disciplines with the solicitors’ branch being the main point of contact for clients as barristers (advocates in Scotland) tend to reserve their expertise for complicated cases that result in formal litigation and therefore have rights of audience to plead in the most senior courts. Historically, only enrolled solicitors could provide

‘reserved legal services’ which include the right to conduct litigation and appear in the lower courts, probate (executry in Scotland) work and notarial activities such as validating signatures and the administration of oaths. ‘Conveyancing’ is a reserved area in Scotland, but not in England.

In 2013, the sector generated £20.6 billion to the UK gross domestic product, 1.6% in total (TheCityUK 2105). By 2014, this had grown to £29.12 billion per year and £3.37 billion in exports, forecasted to increase to £34.44 billion and £4.46 billion respectively by 2018 (LS 2014(b)). The number of practising certificates issued to solicitors and barristers has also grown year on year with the most recent statistics for England and Wales indicating that, at 1 April 2013, there were 134,447 authorised Solicitors and 11,115 regulated entities, 15,355 Barristers, 7947 members of the Chartered Institute of Legal Executives (CILEx), 1170 Licensed Conveyancers, 1980 Patent Attorneys and 820 Trademark Attorneys (LSB 2014). In 2014, in Scotland, there are 11,380 authorised Solicitors (LSS 2014) and based on information provided directly by the Faculty of Advocates, 712 Advocates.

Prior to the Legal Services Act 2007, the Law Society (LS) (of England and Wales) was responsible for both regulation and member services. Since then, the Legal Services Board (LSB) is the ‘super-regulator’ with eight discipline-specific regulatory bodies reporting to it, including the SRA, the Bar Standards Board and CILEx. The LSS still retains both functions. However, since 2010, complaints in relation to the adequacy of legal services are dealt with by a separate body, the Scottish Legal Complaints Commission (SLCC).

(b) The trading structures of UK law firms

Historically, law firms in Scotland and England and Wales were required by their professional bodies to trade as unlimited liability partnerships and share profits only with other solicitors from their own jurisdiction. However, with increasing growth in and complexity of legislation, practitioners began to specialise in specific areas of practice with the result that firms increased in size so as to be able to offer clients a number of experts (Galanter and Palay 1992). The larger firms moved away from this partnership model to become more corporate in their culture, with senior management teams imposing targets on individual practitioners in relation to hours charged to clients and fee income (Boon, Duff and Shiner 2001). As a result from pressure from solicitors, accountants and stockbrokers, the Companies Act 1967 s.120 was enacted to exempt them from the limitation of no more than 20 partners imposed by s.4 of the Joint Stock Companies Act 1856. New structural options were introduced for solicitors with the Administration of Justice Act 1985 allowing them to limit their personal liability and from 2001, to become 'limited liability partnerships' (Empson 2007) with the situation in Scotland paralleled through similar enabling legislation.

Changes were introduced under the Legal Services Act 2007 based on a government report (Clementi 2004) commissioned to look at improving the quality of legal services. Non-lawyer owned businesses are now allowed to provide legal services with the first 'alternative business structures' being authorised by the SRA in 2011 including commercial entities such as Co-operative Legal Services and Stobart Barristers. The Legal Services (Scotland) 2010 is still to come into force as the Scottish Government considers the regulatory framework required.

Section 4 Legal education and training in Scotland, England and Wales

The route to entry to the solicitor profession in Scotland and England and Wales combines academic qualifications and work-based learning over a typical period of seven years. It includes a law degree and vocational course accredited by the admitting Law Society followed by a two year training contract usually with a law firm or in-house or public sector legal department.

The past twenty years has seen a growth in the number of universities offering accredited law degrees, increasing in Scotland from five to ten and in England and Wales, a doubling in the number of single degree law graduates (Mayson 2011). In 2014, UK law firms' graduate intake totalled 5% of the total graduate recruitment (TheCityUK 2015). There were 15,348 students graduating with a law degree in 2013 in England and Wales and in the period from August 2012 to July 2013, 5302 graduates starting legal training contracts (LS 2014(a)). In Scotland for the same period, there were 925 law graduates and 476 training contracts (LSS 2014).

The recent recession had an effect on the numbers of training contracts offered by employer law firms and legal departments with, for example, in Scotland, these dropping from 592 in 2008 to 427 in 2009 (55.1% of the number of students completing their vocational course) (LSS 2013(a)). This was mirrored by a reduction in the number of trainees offered jobs with their employers after completion of their training with, for example, in England and Wales, retention rates falling from 82% in 2008 to below 75% in 2009 (LETR 2013: 107).

(a) Scotland – education and training processes

The LSS completed a ‘cradle to grave’ review of legal education in 2009. This resulted in a series of consultations and reports (for example, LSS 2008) culminating in their decision to adopt a longitudinal view designed to deliver a continuum of legal education pre- and post-admission. The existing structure of an undergraduate law degree and vocational diploma delivered by higher education followed by a two year training contract with a law firm or legal department was maintained. However, as it was decided to move from prescribed courses and materials to an ‘outcomes approach’, new learning outcomes were developed for the undergraduate (Foundation) degree, the (renamed) Diploma in Professional Legal Practice (DPLP) (PEAT 1 Learning Outcomes) and two year training contract (PEAT 2 Learning Outcomes). More details of these are contained in Appendix 1.

The LSS Foundation Programme Guide (LSS 2012a: 6) states that ‘it is essential that everyone involved in the process treats the years of education and training during Foundation Programme, PEAT 1 and PEAT 2 as a holistic process, in which all elements are designed to contribute to the professional education of solicitors’ so that on achievement of all stages, trainees meet the ‘standard of the qualifying solicitor’. The Learning Outcomes (LO) are divided into three areas: (i) knowledge areas covering knowledge and sources of law; (ii) subject-specific skills, general transferable intellectual skills and key personal skills and (iii) values and attitudes.

(i) Professional Education and Training (PEAT) Stages

The Professional Education and Training stages focus on vocational development. In relation to the PEAT 1 and 2 LO, 'Core Outcomes' cover Professionalism, Professional Communication and Professional Ethics and Standards and 'Mandatory Outcomes' (i) Conveyancing, (ii) Private Client, (iii) Litigation, (iv) Business, Commercial, Financial and Practice Awareness, and (v) Tax.

Any Scottish law firm or legal department can take on a trainee by providing a formal two year training contract with the achievement of the PEAT 2 LO a joint responsibility of both trainee and employer. During their two year training period, trainees work to achieve these under the direct supervision of a named supervisor who requires to be a member of the LSS. They have to complete 60 hours of training, a minimum of 40 hours of which must be with an organisation accredited by the LSS. Some employers have applied for their in-house training to be accredited in this way.

The trainee and nominated supervisor require to complete quarterly performance reviews (PQPRs) to assess progress against achievement and demonstration of the LO at three levels: above the standard required, to the standard required and below the standard required. The trainee maintains an on-line training record, that includes a reflective area, in which activities relating to the outcomes can be logged, completed PQPRs and a record of any specific related training. Employers are responsible for (LSS (2011: 10/11) paraphrased):

- providing training to acquire the knowledge, skills, attitudes and values necessary to meet the qualifying standard,

- offering additional training which allows trainees to gain practical experience in law and opportunities to develop their knowledge, skills, attitudes and values,
- providing trainees with experience of applying the law in real life situations,
- giving regular feedback throughout the training including PQPRs and informal reviews, and
- confirming that each trainee meets the ‘fit and proper test’ requirement.

(b) England and Wales - education and training processes

England and Wales adopts the same process as Scotland. Their ‘Qualifying’ law degree (QLD) is either a three year undergraduate degree or a ‘conversion’ one year degree based on an undergraduate degree in any discipline, followed by the vocational Legal Practice Course (LPC) and a two year traineeship. This training period can be shortened by six months if trainees are signed off by their training firm as having completed relevant work experience before starting his or her formal training contract. A recent development is the introduction of an ‘exempting law degree’ that combines both the QLD and the LPC. The qualification of Chartered Legal Executive Lawyer is available through CILEx which offers accreditation of the work-based learning of legal executives at a number of levels and specialisms.

The setting of standards in relation to education and training is the responsibility of the SRA which adopts an outcome focussed approach aimed at benefiting and protecting clients and the public. It issues a detailed Handbook that includes a prescribed set of Principles and

Outcomes (Appendix 2). Employers' obligations, similar to those in Scotland include to (SRA (2014(a) paraphrased):

- a) provide trainees with training and practical experience in at least three distinct areas of English and Welsh law and practice,
- b) enable trainees to develop the skills needed to meet the Practice Skills Standards and comply with the Principles,
- c) ensure that trainees are supervised by solicitors and other individuals who have the necessary skills and experience to provide effective supervision and have relevant learning and development opportunities and personal support to enable them to meet the Standards, and
- d) have processes that include regular review and appraisal of individual trainee performance and development in respect of the Standards and Principles.

Overall, they require to enable trainees to complete their prescribed record of training and meet 'the suitability test' as fit to practice.

In relation to recent developments in legal education, in 2011, the Legal Education and Training Review (LETR), commissioned by the SRA, the Bar Standards Board and CILEx, was tasked to research, consult and offer recommendations in relation to legal services education that supported the regulatory objectives of the Legal Services Act 2007. More details of its approach and relevant publications are contained in Appendix 3.

This produced a series of discussion papers and responses. For example, Mayson (2011) argued that reform of legal education was needed

because (a) the current combination of the LPC and the training contract did not match the types of work now undertaken by many newly qualified lawyers, (b) the undergraduate degree did not prepare students for the demands of their subsequent vocational training and (c) the growth in the numbers of both the providers of the LPC and the regulators created problems in relation to maintaining comparable standards across them all. The LETR (2013) final report proposed that there should be widening of routes to entry to the solicitor profession with more similarity between outcomes and standards across these so as to allow people to make career changes. Its detailed Recommendations (Appendix 3) are the subject of current consultations (see for example, SRA 2014(b)).

Summary

This chapter provides an introduction to this thesis and the UK legal profession so as to establish the context for the following chapters.

Chapter 2 Developing judgement in contemporary legal practice

Introduction

‘Integrity of vocation demands a balanced combination of individual autonomy with integration of shared purposes.

Individual talent needs to blend with the best common standards of performance; the individual must exercise personal judgment as to responsible application of these communal standards’ (Sullivan 2005: 284)

This quote summarises the theme of this chapter that addresses the first of the research questions: how professional judgement is described in theory. Following my methodology of interpreting knowledge in its application, rather than attempting a ‘critique’ of various theories, I have structured the analysis around a consideration of judgement in context. I start by considering its general composition then go on to discuss its relevance in the functioning of lawyers, how it is developed in practice and the implications for legal education.

Section 1 Decomposing professional judgement

Aristotle (2004) describes the capacity for practical judgement - ‘*phronesis*’ as an essential element of man’s ability to function effectively. It involves taking a contextual decision that is both wise and practical:

‘Professionals reason toward the goal of wise action....(t)hus, practice is normative....wisdom must be seen as socially constructed, taking its meaning only within the particular ethical framework..... (w)ise action means making the best judgement in a specific context and for a specified set of ethical beliefs....evaluated as best against what is possible in the specific

circumstances in which they occur and what is desirable within the particular ethical framework' (Cervero 1992: 92).

Its currency in contemporary society is illustrated by Dreyfus and Dreyfus (1986: 8) in their argument that human decision making will always succeed over computers because it is a 'blend of careful analysis, intuition and the wisdom and judgment distilled from experience'. This illustrates that the exercise of judgement is not simply a cognitive function but also involves affect and 'artistry' (Schon 1987). Feelings are an integral part of people's motivation to make good judgments as 'they activate our ethical values' (Cooper and Sawaf 1997: 196). They are also an inherent part of people's ability to learn and adapt to changing situations (Webb 2002, Raelin 2008).

The historical basis of the professions stemmed from the need of society to be able to source expert help in areas of complexity from individuals with expertise based on relevant knowledge and high standards of practice (Larson 1977, Collins 1990). Given the resultant discrepancy of power (Abel 1998, 1989, 2003), society has to be able to trust the judgement of professionals to put their clients and patients' interests first through the existence of a 'collective consciousness.... (that provides) a moral force' (Knorr Cetina 1999: 179) and a commitment to maintain the necessary expertise (Cheetham and Chivers 2005, Sullivan 2005). For example, the medical profession emphasise the importance of acquiring clinical decision-making that involves:

'those complex and major judgements made by members of a profession who are licensed to serve the public in this way, and also the capacity which has been cultivated in professionals to

distinguish between complex and competing demands and moral ends.’ (Fish and Coles 2005: 110)

Professionals describe this exercise of judgement as the ‘heart of professional practice’ (Fish and Coles 1998: 254, cf. Beckett and Hager 2002). Yet, they have to be able to do this ‘in the real world of uncertainty, dynamism and time pressures’ (Sadler-Smith 2008: 53/54) and where ‘the rules for reaching an answer or evaluating its rightness are unclear perhaps because two goods or two evils are involved and there is no established way of quantifying them for direct comparison’ (Ozarak 2005: 149). Following Hammer (1998), it takes a certain type of person to be comfortable with the vulnerability and personal exposure that this brings and have the confidence to take such decisions in the absence of absolutes. Professionals need to be able to function in ‘indeterminate zones of practice – uncertainty, uniqueness and value conflict’ (Schon 1987: 6) where there are no ‘right’ or ‘wrong’ decisions only the correct decision for that particular patient or client in that specific set of circumstances (Cervero 1992, Lewis 2011). This implies the ability to reframe and adjust to changes (Aaronson 1998, Beckett and Hager 2002) as ‘there is always room for the unexpected and the professional...needs to be capable of anticipating and handling such uncertainty’ (Styhre 2013: 34). In recognition of this, Schein (1972: 44) argues that:-

‘an important part of the training of a professional is... “training for uncertainty” which involves attitudinal components such as maintenance of one’s self-confidence even when one does not have a clear answer to the problem, willingness to make a decision

under conditions of high risk, the ability to inspire confidence in a client even when operating in an area of high uncertainty’.

The exercise of judgement therefore requires the assessment of relevancy of facts and objectives, the identification of options and the selection and implementation of recommendations. By their nature these exercises of choice are subjective and ‘discretionary’ (Beckett and Hager 2002).

Both the cognitive (technical) and affective (humane) elements have to be afforded due weight (Downie and Macnaughton 2000) so that combining ‘both hemispheres of the brain, one reintegrates information into new patterns’ (Raelin 2008: 3). In addition, as judgements are ‘never value-neutral’ (Cervero 1992: 93), they need to engage with the ethical and moral doctrines of each discipline and as a result, allow professionals to build their identity within their discipline and feeling of self-worth in relation to their role in society. Illustrative of this, Beckett and Hager (2002: 11) argue that such ‘(practical) judgements involve the whole of the person’s experience....(the involvement of that person’s feelings and desires, wants and thoughts and of course their embodiment)’. In addition, they have to be exercised in context with a recognition that they will have an effect on the situation of that particular client and therefore (Beckett and Hager (2002: 184-195) paraphrased):-

1. are ‘holistic’ in that they involve ‘the cognitive, the practical, the ethical, the moral, the attitudinal, the emotional and the volitional’, often building incrementally from earlier judgements (cf. Dewey 1938) and include both technical knowledge and an assessment of anticipated risks (cf. Gawande 2011),
2. are ‘contextual’ being specific to the circumstances affecting a particular client or patient so the professional requires to be

- observant and have ‘alertness, situational appreciation and attentiveness to the details of the particular case’ (cf. Lewis 2011),
3. ‘denote’ because through their exercise they have real-life consequences and are developed through the act of practice (cf. Schon 1987),
 4. are ‘defeasible’ because they are exercised in situations where there is no absolute answer, they have the potential to be fallible, so need to be flexible and able to adapt to changing circumstances (cf. Dewey 1938, cf. Blasi 1995),
 5. include ‘problem identification’ as in practice ‘key problems are commonly open rather than closed in that they have no unique solution, the data needed to solve the problem are not given and it may be unclear what rules or procedures are applicable’ (cf. Blasi 1995, cf. Aaronson 1998, cf. Brest and Hamilton Krieger 2010), and
 6. are ‘socially shaped’ as they are exercised in a ‘community of practice’ that establish and sustain ‘norms and values that come from a cultural formation’ (cf. Wenger 1998).

In summary, the exercise of professional judgement requires experience of practice, an ability to manage complexity and uncertainty, an active generation of context specific options and the exercise of selective discretionary choice. Based on this, a proposed working definition of it is:

‘a learned ability to interpret and apply complex knowledge in the context of each specific client situation, honed by experience in that discipline and informed by an underlying commitment to ethical practice so as to generate achievable actions.’

Section 2 Judgement in the context of functioning as a lawyer

The legal profession as a distinct entity has a duty to ensure that society is able to access justice serviced by lawyers who have the requisite knowledge, skills and character (Kronman 1993, Rhode 2000) and are able to provide ‘effective practice.. founded upon (1) sufficiency of knowledge and (2) artistry of application’ (Sadler-Smith 2008: 53/54, cf. Webb 1998).

Clients expect their lawyers to be ‘problem solvers’ (Aaronson (1998: 248, cf. Blasi 1995, cf. Brest and Hamilton Krieger 2010) able to interpret the law so as to form a judgement about the best solution in the particular set of circumstances (Schon 1987, Coles 2002, Stuckey 2007). This involves both ‘the capacity to assess situations shrewdly and to draw sound conclusions’ (Brest and Hamilton Krieger 2010: xxviii) as well as apply specialist knowledge based on ‘the reordered conditions and dynamics of the chains of actions of collective life’ (Knorr Cetina 1999: 10). In recent years, the source materials of the law, previously only available in law books, legislation and case reports, have become more accessible to the general public through the Internet. Clients have become potentially better informed and more likely to complete routine work such as preparing a will or setting up a company themselves (Susskind 2008). However, its interpretation in complex areas has become more sophisticated (Flood 1996) with clients seeking professionals able to make judgements that combine knowledge of this complexity with an achievable application (Hilton and Migdal 2005). The practice of law is therefore:

‘ultimately, a matter of engaged expertise...the legal profession must move between the stance of theoretical reasoning and highly

contextual understanding of client, case and situation’ (Sullivan et al. 2007: 115).

Lawyers, as established earlier, have to work ‘in the real world of uncertainty, dynamism and time pressures’ (Sadler-Smith 2008: 53/54, cf. Schon 1987, 1991, Blasi 1995, Aaronson 1998, Webb 2004, Stuckey 2007), where ‘various solutions are tested with the help of precedents, examples and previous experience’ (Svensson 1990: 62) and the rules for reaching an answer or evaluating its rightness in that particular situation may in fact be contradictory (Higgenbotham 1987). Balancing at times the conflicting demands of clients, professional regulations and business pressures requires ‘the exercise of perception – the ability to discern acutely and respond with discrimination to the features of a given situation’ (Webb 1998: 144), personal resilience (Westwood 2010) and ‘moral courage’ (Duncan 2011) supported by the ethical framework supplied by a recognised and independent body (Mather 2011). Ethics are an important element of the practice of all professionals (Abel 1989, Webb 1998, Nicolson 2005, Epstein 2006, Cheney et al. 2010). Lawyers must advise clients, not only in relation to the specific points of law involved in their situation, but also with regard to the context of its application to their options and choices. In addition, they have to observe their professional obligations and codes of conduct prescribed by their regulatory body with the result that:

‘to provide sound professional judgement, it is necessary to resort to a well-honed and mature sense of moral acuity. Unless one subscribes to a very formalistic account of law, a familiarity with and sensitivity to moral issues is an essential quality that all lawyers must have if they are to advise clients about any particular

area of law or what the courses are likely to do in any particular case. Without such resources, lawyers will be ill-equipped to fulfil the most basic skills of legal representation; they become only technicians, not advisers' (Hutchinson 1998: 187/8).

A comprehensive summary of the characteristics of such 'practical judgment' is offered by Aaronson (1998) and emphasises the importance of taking action. Mirroring Beckett and Hager (2000), it includes (paraphrased):

1. the ability to see the whole situation and apply both a breadth and depth of knowledge tailored to the particular circumstances,
2. a strong sense of the danger points, the likely options and potential consequences,
3. the ability to see multiple viewpoints and relevant context,
4. the ability to be detached and empathic at the same time,
5. combining intellectual and moral virtues so as to be grounded in the real world, and
6. being nurtured and developed over time.

A working definition of legal judgement is therefore:

'the learned ability to interpret and apply the relevant law in the particular set of circumstances applicable to the specific client so as to determine and implement the most suitable option available and acceptable to that client and within the parameters of established practice'.

Section 3 Developing judgement in practice

In recent years, the introduction of external regulation and increased consumerism has resulted in individual professionals being called upon to defend decisions (Irvine 2009, Bolton 2010) taken with incomplete information and under time pressure to meet the particular demands of individual clients (Argyris and Schon 1974, Svensson 1990, Blasi 1995, Westwood 2010). Practitioners therefore ‘require courage, judgment, and self-knowledge as well as a prodigious amount of discipline-specific knowledge and skills’ (Mann 2006: 147). Because professional judgement has to be exercised in the context of that patient or client, it is developed through practice where learning is episodic and ‘swampy’ (Schon 1987, 1988). As offered above, Beckett and Hager’s (2000: 301) model recognises the informal and ‘capricious’ nature of everyday work that involves the need to solve problems efficaciously through the blending of affect, ethics and cognition. This highlights that learning occurs through the act of practice (paraphrased):

1. contingently rather than through formal structured learning,
2. practically rather than through theory,
3. by the ‘doing’ process rather than simply by content,
4. particularly rather than through generalisations, and
5. by the affective and social domains rather than simply cognition.

Cervero (1992: 92) argues that ‘to improve practice, professionals’ ability to make the best judgements must be facilitated’ and to achieve this, the focus must be on the acquisition of practical explicit knowledge and processes, including modelling and coaching, as they encourage reflection and applied reasoning through observation and supported participation. This allows novices to build their skills and develop their

understanding, not only in relation to their current task and role, but also to prepare for more advanced ones. It enables them to develop confidence in their own abilities. This requires ‘the reflective type of knowledge...which can better explain how professional proficiency is embedded in practice itself, with the contextual conditions that are tied to specific situations’ (Svensson 1990: 69/70 cf. Blasi 1995) developed ‘by becoming a person of good judgment and not just an expert in the law’ (Kronman 1993: 2/3) and acquiring wisdom ‘which is far more than knowledge for it characterises what you are rather than what you have’ (Raelin 2008: 38).

Expertise involves being able to sort rapidly the relevant from the irrelevant, make linkages to what has been experienced before to assess potential problems, identify possible solutions and arrive at the ‘correct’ judgement for this particular set of circumstances and client (Aaronson 2008, Brest and Hamilton Krieger 2010, Lewis 2011). Experts have to be able to ‘see forward’ (Beckett and Hager 2002) so as to be able to extrapolate from current information potential future choices, risks and implications: ‘“experts’ construct mental models and run them in simulation in order to evaluate the likely consequences’ (Blasi 1995: 318). As such they operate at the leading edge of their practices, ‘acting not on guesses but on perceptual grasp and the ability to make qualitative distinctions gained through experiential learning’ (Sullivan 2005: 249, cf. Martin 2000). Their judgement has to be grounded in established norms (Brest and Hamilton Krieger 2010) and this ‘presupposes a professional community that can both justify and critically correct deviations from the instituted norms’ (Styhre 2103: 33).

Regulators are tasked with ensuring consistency of individual judgement and do so by setting it in the context of its prescribed standards (for example, SRA 2011) supported by the ‘three clusters of values – values of the academy, of professional practice and ethical-social values of professional identity’ (Sullivan 2005:28). This holistic structure enables its members to practice successfully by establishing ‘an enduring set of normative and behavioural expectations’ (Moore 1970: 5) and offering a ‘feeling of identity, collegiate loyalty and shared values’ (Cain 1983: 147). This in turn allows individuals to make decisions in the context of accepted norms at the same time as permitting ‘considerable individual discernment and capacity for initiative and judgment’ (Sullivan 2005:15, cf. Lizzio and Wilson 2007) that will result in the ‘best’ solution for that particular client or patient.

Traditionally law graduates enter established legal partnerships with the expected promotion route being from apprentice to partner within that firm with progression from novice to master achieved by ‘exposure and immersion’ (Schon 1987: 38) through an apprenticeship ‘well grounded in the subtleties of experienced distinctions and analogical reasoning’ (Sullivan 2005: 249). The novice learns and progresses through direct observation of an aspirational role model (Raelin 2008, Beckett and Hager 2000) who in turn observes and provides feedback, exemplifies and motivates (Svensson 1990) as well as demonstrating how choices are made. This is illustrated by Lave and Wenger’s (1991: 23) model of legitimate peripheral participation where learning occurs through the process of transition from new entrant to full engagement and complexity and:

‘where the apprentice engages by simultaneously performing in several roles – status subordinate, learning practitioner, sole responsible agent in minor parts of the performance, aspiring expert and so forth – each implying a different sort of responsibility, a different set of role relations and a different interactive involvement’.

Section 4 Developing professional judgement of novices

As argued above, judgement is developed through experience of practice, yet such learning is ‘inherently complex, underdetermined and emergent’ (Cooke, Irby and O’Brien 2010: 41, cf. Maughan and Webb 2005). Beckett and Hager (2000) highlight its importance by arguing that the development of judgement forms the basis for transforming novices into highly proficient practitioners given its link to ‘practical wisdom’ (the ‘*phronesis*’ of Aristotle (2004)) that asks ‘what do I do in this situation?’). This mirrors Schon’s (1987: 285) ‘know-how’ that ‘grows and develops with appropriately structured experience of practice’. Exposing novices to context is important because ‘having intellectual knowledge without practical experience can be extremely jarring to a young adult.... (t)heir instincts have not been honed and their knowledge has not been put to the test of time’ (Farren 2000: 99). They therefore have to be provided with work-based learning that allows ‘repeated application in a particular domain’ (Martin 2000: 181) supplemented by observation and imitation where standards of performance are built into everyday practice (Cheetham and Chivers 2005, Raelin 2008, Brest and Hamilton Krieger 2010). This engages their ‘intentions to learn....and the meaning of learning is configured

through the process of becoming a full participant in a sociocultural practice’ (Lave and Wenger 1991:29).

The traditional apprenticeship model (Fuller and Unwin 2003) provides both the structure and processes ‘to learn when, how and what is to be done – and give reasonable account of why it is done and what kind of person one must become in order to be accepted as competent members in that society’ (Raelin 2008: 101). It also provides reliable and consistent support and distinguishes ‘kind’ learning structures, in which people receive good feedback from ‘wicked’ environments in which feedback is critical and demotivating (Brest and Hamilton Krieger 2010: 633). Atkinson (2000) describes that this model:

- (a) provides direction by allowing people to move from being initially told what to do to increasing the individual autonomy, a key dimension of professionalism,
- (b) offers support aimed at building self-esteem and confidence in operating with incomplete data, and
- (c) has a structure that ensures consistent norms and expectations in which individual judgement can develop.

Fuller and Unwin (2003) offer a strategic overview of the essential elements of an effective apprenticeship by their commentary on the differences between ‘expansive’ and restrictive ones. Unlike ‘restrictive’ ones, ‘expansive’ apprenticeships train beyond the job-in-hand, recognise the importance of exposing apprentices to wider experiences and focus the training on the needs of the individual rather than the organisation. As a result, they ‘are more likely to create learning opportunities which foster ‘deep learning’ (Fuller and Unwin 2003: 412).

The ‘scaffolding approach’ of the master-novice relationship is based on mutual trust and respect that results in the master considering that the novice is worth investing the time needed to make what is tacit explicit (Cheetham and Chivers 2005). This allows (Raelin (2008: 12) paraphrased):

1. the mastering of a task that builds recognition of its immediate use value as well as experience of the context so as to allow for later recall,
2. the ordering of skill acquisition from the easy to more complex,
3. learning by doing, rather than talking about doing,
4. standards of performance to be built in and supported by immediate and relevant feedback,
5. the act of teaching to be more blended and applied,
6. development of the ability to apply and interpret knowledge and theory, and
7. the next application to be different so as to enable the novice’s ability to cope with uncertainty, volatility and change.

Through this process, novices acquire ‘the complex ensemble of analytical thinking, skilful practice and wise judgment on which each profession rests...thinking, performing and behaving’ and learn to apply their acquired knowledge in the ‘uncertain conditions of practice and identify themselves with the best standards and in a manner consistent with the purposes of their chosen profession’ (Sullivan et al. 2007: 27).

In order to progress to mastery they have to develop the capacity for judgement ‘developed through experience, and grounded in our ability to deal not just rationally but relationally with others’ (Webb 1998: 144).

Most importantly, they need to develop the ability to ‘extract expert knowledge from their later experiences’ (Blasi 1995: 319).

In summary, to develop professional judgement novices require to be:

1. allocated relevant work that allows them to build their knowledge, skills and experience, and develop an understanding of context,
2. able to transfer what they experience in one context into other practice situations and make connections between them,
3. given sufficient responsibility to identify and apply their own judgements at the same time as being able to seek support from more senior colleagues, and
4. skilled at observing their masters in action so as to identify and articulate how they arrived at their decisions, including sorting relevant details from irrelevant, identifying options and making and acting on their final selection of choice.

(a) The importance of being able to learn from experience

Schein (1972) determines that the basis of future professional competence is the capacity to learn how to learn. As established in earlier sections, learning from experience is practice-based and ‘inherently complex, undetermined and emergent’ (Cooke, Irby and O’Brien 2010: 41, cf. Maughan and Webb 2005). Novices enter their professions with basic levels of technical knowledge and some ability in the necessary skills. In their early years of practice, under the direct supervision of more experienced practitioners, they learn to develop their client and patient facing skills as well as their organisational skills, such as compliance with operational procedures and protocols. They may need encouragement to develop their ability to ‘learn to make judgments

under conditions of uncertainty’ (Sullivan et al. 2007: 22) as they ‘lack the practiced eye and tuned ear that allow for the creativity, innovation and grace of the master’ (Farren 2000: 99). They require time for consolidation and review because if the learner ‘gets away from the base of supplies ... of accrued meanings... the experience is flustered, thin and confused’ (Dewey 1934: 56).

Eraut’s (2007) model of early career workplace learning offers a detailed consideration of the process and activities involved in this learning and their inter-relationships. He groups them around three headings: (a) work processes where learning is a by-product, (b) learning activities located within work or learning processes and (c) learning processes at or near the workplace. He narrates the necessity of proving a number of inter-related aspects based around collaborative teamwork that include (a) being allocated work that is challenging and perceived to have value, (b) being provided with appropriate levels of support and immediate feedback and (c) having personal commitment and confidence. In particular, it offers that one of the main factors that affect how much people benefit from this model is the personal confidence of the learner. This results in a cyclical process where the willingness of the novice to take on challenges is derived from feeling supported by more senior people with personal confidence increasing by successfully meeting these challenges. This in turn generates recognition within the ‘community’ that the novice is worth supporting. The ability of the organisation to do this is therefore directly affected by the skills and consistency of its supervisors.

Blasi (1995: 359) re-inforces the importance of this active engagement of the learner as ‘the person inside the problems acquires an understanding quite different from that of a person with a passive stance and the perspective of an observer’. This illustrates Vygotsky’s (1978) zone of proximal development:

‘the distance between the actual development level as determined by independent problem solving and the level of potential development as determined through problem solving under adult guidance or in collaboration with more capable peers’ (cited in Cole et al. 1978: 86).

Sullivan (2005: 248/9) adopts the Dreyfus and Dreyfus (1986) approach to the development of expertise by describing the fourth stage of proficiency as being reached when the ‘learner is able to make holistic, so-called intuitive judgments, interpreting whole situations on analogy to past ones without having to decompose them into abstract elements for processing’. Stage five, the highest stage is achieved when experts use:

‘the ability to make qualitative distinctions gained through experiential learning ... well grounded in the subtleties of experienced distinctions and analogical reasoning achieved through a long apprenticeship to more expert practitioners’.

This reinforces the importance of the collegiate nature of ‘a community of disciplined practice.... whose activity has a meaning and value in itself, not just in the output of profits that result from it’ (Martin 2000: 28).

(b) The importance of ‘communities of practice’

The importance of having a vocation goes beyond personal altruism and links directly to one of the core elements of professionalism that recognises the value of having a belief in the intrinsic value of work that benefits others (Freidson 2001). As discussed above, individual practice has to be grounded in the context of accepted and established norms to ensure that he or she is ‘acting competently to serve responsibly’ (Sullivan et al. 2007:23). Social learning theory (Wenger 2009: 211) argues the importance of the interconnected elements of:

- Identity - learning as becoming
- Meaning - learning as experience
- Practice - learning as doing
- Community - learning as belonging

The formation of identity is influenced by the novice’s first exposure to work (Falconbridge and Muzio 2008, 2010) and is an important element of understanding ‘acceptable’ practice. Becoming a member of an established community not only brings formal recognition of abilities but also a sense of collegiality that provides peer feedback, discussion and support as well as parameters of what is recognised practice. Wenger (1998: 152/3) offers that the link between identity and competence is achieved through (a) mutuality of engagement with novices seeing how to behave and masters observing their responses to allocated tasks, (b) accountability as novices develop their understanding and perspectives of what choices are acceptable and (c) use, interpretation and application of the ‘repertoire of practice’ (cf. Eraut 2012). This discipline of mutual support and accountability is the basis of self-regulation as it includes:

‘what matters and what does not, what is important and why it is important, what to do and what not to do, what to pay attention to and what to ignore, what to talk about and what to leave unsaid, what to justify and what to take for granted, what to display and what to withhold, when actions and artefacts are good enough and when they need improvement or refinement’ (Wenger 1998: 81).

In summary, a ‘community of practice’ creates the elements essential to the development and the exercise of professional judgement as it:-

1. provides a structured and regulated route of entry into the discipline, including training in the application of specialist knowledge in context through which a novice can learn what is current and acceptable practice,
2. offers the master-apprenticeship model where learning is achieved through direct observation, supported by incremental responsibility and feedback,
3. generates recognised standards to enable judgements to be defensible by providing an established framework to support the making of the decision and well as setting the parameters of what another professional at that level would do in the same set of circumstances, and
4. enables both its members and its discipline to continually respond to the demands of professional work through reflection and learning that is ‘critical to creating new meanings that lead to personal development and change’ as well as ‘an even stronger community of practice’ (Preskill and Torres 1991: 102/103).

(c) The importance of reflection

The links between reflection and learning in relation to professional practice are well established. For example, Schon's (1987, 1991) analysis of reflection-in-action and on-action illustrates the importance of professionals not simply responding to the need to make decisions during 'hot action' (Beckett and Hager 2000, 2002) but subsequently considering what led to that choice and what to do differently in the future. Similarly Raelin (2008: 70) argues that 'experience solidifies the learning made tacit by experimentation but may lead to mastery more quickly when subjected to reflection'. This reflective process allows professionals to develop their practice because '(d)ouble-loop learning changes the governing variables ('the settings') of one's programs and causes ripples of change to fan out over one's whole system of theories-in-use' (Argyris and Schon 1974: 19). In addition, 'skilled problem-solvers are much more likely to actively engage in reflecting on their experiences' and therefore aware of their abilities and limitations (Blasi 1995: 360).

To enable this, Raelin (2008: 213) offers the five skills of reflective practice as 'being, speaking, disclosing, testing and probing' in recognition of the importance of 'vocation, openness, articulation and investigation'. This allows reflective practitioners to:

'become sensitive to why they performed in a certain way, the values being manifested, the discrepancies existing between what was said and what was done, and the way in which forces below the surface may have shaped actions and outcomes'(Raelin 2008: 74).

It also enables them to identify and respond to any ‘distorted meaning’ resulting from personal bias as well as learn from mistakes and errors of judgement (Brest and Hamilton Krieger 2010).

Learning to reflect is itself an incremental and ‘reflective’ process (Boud and Walker 1993, Bolton 2010) that can be built into everyday practice, particularly in relation to experience of critical incidents (Lizzio and Wilson 2007). Sheppard et al. (2009: 24) highlight the incremental nature of developing this with their description of three levels of: pre-reflective, quasi-reflective and reflective thinking. At the initial stage, knowledge is ‘certain and absolute’, at the next, there is a recognition that ‘some problems are ill-structured and inevitably include elements of uncertainty’ and at the final stage, there is an acceptance that:

‘knowledge is never a given...some judgments are more solidly grounded and defensible than others... and.. may be reviewed and altered on the basis of new information, perspectives or tools of enquiry’ (quoting Pascarella and Terenzini 2005: 38).

This mirrors King and Kitchener’s (1994: xvi) seven stage process that describes the development of ‘reflective judgement’ defined as involving ‘integrating and evaluating data, relating those data to theory and well-informed opinions, and ultimately creating a solution to the problem that can be defended as reasonable or plausible’. This is similar to Kohlberg’s (1996) argument that individuals move through defined stages of moral development progressing from lower stages that assume certainty to recognition that some elements may not be known and finally, to becoming skilled at working at high levels of complexity. Kolb (1984: 141) describes this as three stages: (a) ‘acquisition - self is

undifferentiated and immersed in the world’, (b) ‘specialization - self as content interacting with the world’ and (c) ‘integration – self as process transacting with the world’. Given the emphasis on the importance of understanding context in the exercise of judgement, novices have to achieve a minimum of stage (b) (the equivalent level Kohlberg’s (1996) middle marker of Level Four).

Section 5 Development of professional judgement in legal education

As explained in Chapter 1, the UK legal profession employs a silo learning model with trainees obtaining a qualifying law degree and a vocational qualification before serving a ‘stratified apprenticeship’ (Gabarro 2007: xx) where the practice of law is learned on the job. Sullivan et al. (2007: 22/27) states that ‘(t)he common problem of professional education is how to teach the complex ensemble of analytical thinking, skilful practice and wise judgment on which each profession rests’ and describes the ‘six tasks of professional education as developing in students the ability to (paraphrased):

1. develop knowledge,
2. develop the capacity to engage in complex practice,
3. learn to make judgments under conditions of uncertainty,
4. learn how to learn from experience,
5. be part of responsible and effective professional community, and
6. have an orientation towards public service’.

Academia recognises the limitations imposed on its ability to provide the context of legal practice so concentrates on teaching students ‘how to construct their own theories and models’ (Blasi 1995: 389). In addition,

law schools emphasise the ethical context of their undergraduate courses through (a) developing a sense of community, (b) consideration of the importance of role, (c) enhancing integrity, (d) valuing connection and responsibility and (e) developing the capacity for judgement (Webb 1998: 145, cf. Westwood 2010).

Lipman (2003: 290) argues the need to restructure educational practice to enable students to strengthen the power of their judgment exercised in context and responsive to inter-relationships and that:

‘(i)t is for this reason that the education of professionals so often centers on the honing of professional judgment. The preparation of future lawyers and doctors includes considerable simulation of practice: moot courts, internships, and the like’.

In recognition of this, some law schools offer experience of context through law clinics providing pro-bono advice to clients unable to afford to pay for legal services as they ‘present experiences that immerse students into the narrative, practical reasoning entailed in professional judgment in the uncertain situation of frontline practice’ (Sullivan 2005: 213). This teaches them at this pre-practice stage to be able to ‘critically evaluate arguments, assumptions, abstract concepts and data to make judgments and to frame appropriate questions to achieve a solution or identify a range of solutions to a problem’ (Stuckey 2007: 49).

Summary

The foregoing analysis suggests that the exercise of professional judgement requires the interpretation and application of complex knowledge in the context of the relevant and specific facts and

circumstances of each client so as to generate achievable actions. It is developed and honed through experience in that discipline and underpinned with an underlying commitment to ethical behaviour and an understanding of parameters of accepted practice.

As a result, professionals have to be able to learn from experience. ‘Communities of practice’ not only establish norms of behaviour but also offer a structure to induct novices into the discipline. The master-apprenticeship model of learning generates a joint contract based on trust where the cycle of observing, feedback and reflection enables the incremental development of both personal confidence and contextual application.

Given the complexity and subjectivity of the exercise of professional judgement, it also provides the collegiality and peer support necessary to respond to external regulation and client complaints. Legal academia recognises the importance of the development of judgement and, within the confines of its access to context, encourages this in its students.

Chapter 3 Social and environmental conditions affecting the UK legal profession and their implications

Introduction

As the UK legal profession is currently experiencing considerable change, this chapter considers a number of social and environmental conditions and their effect on the existing structure and content of the apprenticeship model that, as described in the previous chapter, facilitates the development of professional judgement. In particular, it is necessary to consider their effect on the work content of solicitors and the vocational aspect of their role as both influence how novices are trained and inducted into this ‘community’ and on UK legal education.

Section 1 The legal profession and its position in society

To précis what is well established, a ‘profession’ is distinguished from an ‘occupation’ on the following grounds:

1. it occupies a privileged position in society based on specialist knowledge applied through the exercise of professional judgement (Sullivan 2005, Styhre 2013),
2. it provides a service to individuals, organisations and the wider society that is ethically based and therefore trusted and valued (Cheetham and Chivers 2005, Westwood 2008),
3. it is self-regulating through limiting membership to entrants who meet a qualifying standard and ensuring its members comply with prescribed rules and codes of conduct (Collins 1990, SRA 2011), and

4. its members gain expertise through formal training controlled by a professional body and informally by means of work supervised by more experienced practitioners (Larson 1977, Abbott 1988, Schon 1991),

As with other professions, a form of contract is entered into between lawyers and society: the wider society recognises the value of professional legal advice and support and, in return, grants the profession special privileges, notably higher pay than non-professional occupations. However, in recent years, its altruism has been called into question with some describing it as a self-sustaining monopoly (Larson 1977, Abel 1989, 2003) that creates the ‘maze of legal procedures, codes and precedents’ which results in society’s need for lawyers (Collins 1990: 20) and limits both the ‘production by producers’ and the ‘production of producers’ (Abel 1989). Paterson (1996: 140/157), suggesting that there is ‘an enduring tension between service orientation and self-interest’, proposes a variety of futures for the legal profession including its disappearance, fragmentation and transition into ‘little different from businessmen’. Others argue that ‘commercialisation’ is eroding traditional notions of ‘professionalism’ particularly in relation to ethical conduct (Kritzner 1999, Kronman 1999, Sullivan 2005, Parker et al. 2008). All of this causes potential tensions in relation to the exercise of professional judgement.

Successive UK governments have responded to the consumer lobby by seeking to make improvements to the way the legal services market operates (Paterson 1990, Goriely 1994, Sherr, Moorehead and Paterson 1994, LSB 2011(a), 2011(b), Sullivan 2011). The commissioning of Sir David Clementi (Clementi 2004) to carry out a review in relation to improving access to justice and the overall quality of legal services

compounded this move towards neo-liberalism and resulted in, through the provisions of the Legal Services Act 2007, the loss in England and Wales of the legal profession's established monopolies and self-regulation. From 2012, the legal services market was opened up to new entrants providing a variety of 'alternative business structures'. This was mirrored in Scotland with the establishment of the SLCC in 2008 and passing of the Legal Services (Scotland) Act 2010.

The power and influence of the UK Law Societies has become dispersed (Flood 2011a) with this move away from the historical situation of the individual jurisdictions operating as one 'community of practice' with each professional body setting standards and codes of conduct and dealing with membership admission and regulation. This segmentation is likely to continue as new entrants select the regulator that suits their style of operation and method of delivery (Otterburn and Westwood 2012).

The demographics of the legal profession has altered in recent years with an increase in the numbers of women and people with mixed ethnic backgrounds entering the profession (Galanter 2011, LSS 2014). This, coupled with growth in specialisms, recruitment of in-house counsel and variety of trading structures, is leading to fragmentation (LSB 2011(a), 2011(b)) to the extent that the professional bodies find it difficult to argue that they continue to be able to represent their membership collectively (Abel 1989, 2003, Webb 2004). LETR (2013: Chapter 3) in its analysis of the influence of significant market trends highlights that fragmentation is likely to continue as individual elements of the profession respond differently to the opening up of the marketplace, competition and globalisation.

The following section will consider in more detail external changes that have the potential of long term significance in relation to the work of UK solicitors and the exercise of their professional judgement.

Section 2 External forces changing the legal profession

The UK legal profession is facing considerable and disruptive change (Empson 2007, Mayson 2007, Jarrett-Kerr 2009, Westwood 2011 (a), 2011 (b)). Some of this can be interpreted as the result of the post-2008 economic crisis causing consistent downward pressure on fee income as well as a move away from unprofitable areas of work, such as Legal Aid. This has led to redundancies, business failures and defensive mergers. For example, in March 2014, BDO (BDO 2014) advised that its examination of key performance figures for Scottish law firms from 2008 to 2013 showed continued subdued profits and lower fee income and predicted further mergers. All of these changes have contributed to fewer career opportunities for younger lawyers and a less benign environment for training and development.

Applying Johnson, Scholes and Whittington's model of strategic market analysis (cf. Westwood 2008) allows discussion of a number of significant trends affecting the legal profession. This enables the implications of these on vocation, job roles and the development of judgement and training to be considered in Section 3.

(a) Increased consumerism

Increased consumerism and the impact of the Internet in relation to the public's access to previously protected areas of professional knowledge

(Susskind 1996) is leading to a demystification of the law and shift in the balance of dependency between lawyers and their clients (Hilton and Migdal 2005, Westwood 2001, 2008, 2010). With much of what was historically only accessible by legal professionals, such as court decisions and legislation now available on the Internet, clients have become 'consumers' and more 'knowledgeable' and less disposed to deferring to their professional advisers. They 'shop around' for the best value for money (Westwood 2008) and demand twenty four hour access and instant communication. Dolliver (1990: 271) outlines that the loss of its distinctive knowledge and increasing recourse by individuals to the law to provide recompense for alleged wrongs is resulting in 'lowered public esteem and the cry for accountability'. A growth in formal complaints from clients (Hilton and Migdal 2005) and what was perceived as a lack of rigour in their investigation and response to them led to the removal of this function from the LS and the establishment of the SRA in 2007. Most recently, it has been argued that access to justice will be enhanced if consumers are empowered to handle their own affairs with a prediction that 'self-lawyering is the future' (LSCP 2014). Commercial clients are flexing their power and changing their approach to sourcing legal services by bringing lawyers in-house and moving away to fixed fees (PwC 2014) with appointments of panels of external law firms based on competitive tendering (Westwood 2008, Jarrett-Kerr 2009). All of this creates pressures on the exercise of professional judgement as it is more likely to be externally challenged.

(b) The impact of technology

The introduction of technology has changed the way legal work is undertaken and delivered (Susskind 1996, 2000, 2008). In particular, routine and low risk work is being ‘commoditised’ and delegated to the lower cost base of para-legals. The ease of document retrieval and transfer through the Internet has enabled firms to ‘decompose’ elements of their service provision (Susskind 2013) and outsource legal research and the production of documents to other organisations and locations (Westwood 2013) again reducing the cost base. In relation to the internal business operations of law firms, software now allows the identification of areas of work that generate high value and contribution to profit, causing a move away from the traditional trading and reward structures of partnerships based on collegiality and equity (Hinings, Greenwood and Cooper 1999) to more specialist firms and business models that reward individual performance (Galanter and Palay 1992). Susskind (2013) predicts a variety of future roles for lawyers, who have the skills to push forward the boundaries of the sector’s use of information technology, including ‘legal knowledge engineers’. These changes affect the type of work assigned to novice solicitors and the allocation of resources to develop their professional judgement.

(c) Increased globalisation, specialisation and commercial orientation

With growing demand from clients for services to support their trans-national commercial dealings (Rose and Hinings 1999, Aharoni 1999) and widening recognition of the transfer of professional qualifications, the larger law firms have sought to position themselves and model their

structures in a similar way to global accountancy firms (Empson 2007). They have therefore adjusted their operations and cultures (Flood 1996, Faulconbridge and Muzio 2008, Flood 2011(a), Cook, Faulconbridge and Muzio 2012) as a strategic response to the impact of global markets by increasing specialisation through the development of ‘knowledge workers’ (Hammer 1988, Knorr Cetina 1999, Westwood 2006, Leitch 2006, Brown, Lauder and Ashton 2008) and moving to a multi-discipline and multi-jurisdiction approach. Take-overs and mergers have become an accepted strategy to gain market reach and depth (Jarrett-Kerr 2009, Otterburn and Westwood 2010), illustrated by the move of the Australian firm, Slater and Gordon into the UK with its acquisition of the London firm of Russell, Jones and Walker, and Pannone in Manchester. Defection of partners to other firms is now a recognised strategy (Kronman 1993) as firms seek to grow their specialisms and increase turnover as ‘most lawyers become more productive when they specialize and pressure for productivity thus (becomes) pressure to specialize early’ (Heinz et al. (2005: 292). It is argued that these changes has caused ‘partners...to resemble other capitalists, with firms resembling closely held corporations rather than true partnerships’ (Sechooler 2008: 243), and that the ‘dramatic conjunction of specialisation and globalisation... will fundamentally change the values of the lawyers in these firms’ (Boon, Duff and Shiner 2001: 592).

This trend, combined with market pressures on traditional areas of fee income, such as legal aid and conveyancing, and increased complexity of the law, has led to a bifurcation of law firms into the two client markets of individual clients and commercial organisations with different drivers and structures (Galanter 1983, Kelly 1996, Gray 1999, Galanter and Roberts 2008). These changes threaten the historical method of

developing a ‘community’ based professional judgement through the master-apprentice relationship model.

Summary

The scale of these disruptive changes results in it being difficult to extrapolate what the UK legal services marketplace will look like five years from now. There are a number of futures that can be suggested based on the current trends ranging from the demise of the profession as a separate and independent entity to a repositioning to become the recognised protectors of society (Paterson 1996, Westwood 2011(a), 2011(b)). One option, following the premise that flexibility and innovation will be the drivers of future success (Faulconbridge and Muzio 2010), is that lawyers become technical experts ‘traveling light psychologically, with few loyalties or other encumbering ties expect economic ambition’ (Sullivan 2005: 7). Freidson (2001) offers a move away from the ‘professional structure’ based on collegiality to either entrepreneurial or bureaucratic structures, the former limiting the sharing of expertise and the latter inhibiting individual judgement, both of which run counter to professional cultures and norms (Chivers and Cheetham 2005, Raelin 2008). In addition, new business structures are introducing ‘competing scripts’ that offer the ‘opportunities for entrepreneurs, moral or economic, to reshape professional organizations’ (Nelson and Trubeck 1992(b): 24).

The increasing recognition of the status of para-legals and licensed conveyancers may result in a number of formal job options, leading to a hierarchy of qualification and career choices (Cheetham and Chivers 2005, LETR 2013). It may be that new entrants concentrate on low risk,

high volume work, offering limited employment for accredited solicitors. Large law firms may select alternative structures that reduce the need for practicing certificates and their involvement with legal regulators. As a result, the range of functions and influence of the professional bodies may continue to decline. With regulators seeking consistency of competence and service standards, continued pressures on work-life balance from 24 hour access by clients and demands on chargeable and recoverable times (Moorhead and Boyle 1996), lawyers may prefer to focus on the immediate job in hand, losing the ‘opportunity for pro-bono service, civic involvement and breadth of experience that build professional judgement and sustain a professional culture’ (Rhode 2000: 10).

Section 3 Implications for the legal profession

The overall effect of the trends narrated above will now be considered in relation to the vocational nature of being a lawyer and future job roles as these have implications on both the work of solicitors and the development of the judgement of novices.

(a) Pressures on vocation

Regan (2002: 162) describes three professional values of lawyers: devotion to client, craft autonomy and ‘seeing themselves stewards of the legal system’. While the first two fall within the accepted generic definition of a profession, the latter is unique to law. As discussed above, commentators suggest that there has been an historical shift away from having a commitment to providing a service to society to becoming

technical experts and towards commercialisation and replicable standards with ‘(p)riority of profits and the resulting sweatshop schedules...squeeze(ing) out time for public service and family life’ (Rhode 2000: 208).

This poses the question whether the role of ‘stewards of the legal system’ is being and indeed can be maintained. With so many of their underlying assumptions being challenged, lawyers ‘may find it difficult or impossible to recognize the limits of their ability to predict new professional role demands’ (Argyris and Schon 1974: 153). With the continued fragmentation of the profession, and the reduction in the power and influence of their professional bodies, the unique essence of the role of lawyers may well become dissipated to such an extent that it loses its identity: ‘other and greater possessions are at stake’ including ‘a valued culture; complicated or subtle techniques...self-examining integrity and self-forgetful service’ (Lewis and Maude 1952: 1).

The inter-relation between what the profession considers appropriate, what the marketplace demands of it and the resources available determines its range of responses (Johnson, Scholes and Whittington 2007, Westwood 2002, 2008) and results in strategic choices that ‘will... ‘remake’ the dispositions of the group for future action at the same time that strategic actions contribute to ongoing trends and developments within the legal profession’ (Nelson and Trubeck 1992(b): 22). The trend towards segmentation inhabiting distinct cultures (Galanter 1983, Kelly 1996, Gray 1999, Galanter and Roberts 2008) results in ‘character....shap(ing) these institutions, but these institutions also....shape character’ (Regan 1999: 3, cf. Nelson and Trubeck’s (1992(a), Mather 2011).

The impact of the new commercial entrants to the legal services market is currently uncertain and may meet Clementi's (2004) stated aim of providing a cost effective legal service in a consumer-friendly way. For example, the private equity owned Quality Solicitors announced that it was abandoning charging by the hour to guaranteeing fixed fees based on the scope of the first interview (LG 2013).

Market forces are driving some lawyers to align themselves more closely with commercial values rather than their professional body. High street practitioners have experienced an erosion of their core areas of fee income to such an extent that, in recent years, they have had to focus on their immediate survival. Others are moving to work in-house rather than have to deal with the pressures of running a business in a competitive and consumer-driven environment. The larger law firms see themselves more and more as commercial entities (Flood 1996, Galanter and Roberts 2008) and limit their dealings with the relevant professional bodies to achieving their particular strategic and/or operational objectives. The Chief Executive of Riverview Law, which provides legal services to FTSE100 clients on a fixed-fee basis is quoted as saying (LG 2014) that 'in the next five or six years we will not be recruiting senior lawyers. At the moment we take people with a range of experience, but we're taking people out of school... (t)he market is changing rapidly'.

Pressures to become more commercial are challenging the altruistic values of having individual commitment to 'a calling' (Neighbour 1992) and 'meaningful work' (Raelin 1985). Yet the fiduciary nature of the solicitor/client relationship is based on trust (Maister 1997, Westwood 2002, 2008, 2010) and confidence in professional judgement (Schon 1987, Svensson 1990, Maister, Green and Galford 2000) founded on 'who we are as moral persons' (Webb 2002:133). Sullivan (2005: 169)

offers that the current re-adjustment of the proper role of lawyers is the basis for a crisis of ‘vocation’ as ‘in the absence of social confidence in the value of the work done, ambition must become paranoid and even self-destructive’.

Using behaviour to illustrate peoples’ theory-in-use Schon (1987, 1991), the growth in complaints indicates that some lawyers are prepared to put self-interest above that of their clients (Kronman 1993), pressure to achieve chargeable hours is at variance with a professional’s duty to achieve the best result for each client (Higgenbotham 1987), and sharing expertise and spending time training the next generation is undermined by reward processes where fee generation and individual contribution to profit is lauded (Galanter and Palay 1991, Galanter and Roberts 2008).

(b)Future job roles

Environmental pressures are leading to the traditional unlimited liability partnership as a trading model being replaced with a variety of options, cultures and operating styles (Galanter and Palay 1992, Gray 1999, Galanter and Roberts 2008, Sechooler 2008, Boon 2010). This trend has increased in momentum since the introduction of alternative business structures with new commercial entrants adopting delivery mechanisms that reflect their target markets and existing methods of delivery (Mayson 2007).

Over the same period, the way that legal work is handled has changed. Information technology provides the opportunity to achieve operational cost savings through routinising work that can be standardised, thereby increasing delegation of legal work to non-legally qualified staff (Susskind 1996, 2008). This role of ‘para-legal’ has gained recognition

thereby increasing the variety of formal career options for people working in the sector (Boon 2010, LETR 2013).

A tension arises from marketplace pressures to succeed commercially through increased commoditisation and processing of legal work at the same time as providing a culture where professionals are able to function well (Raelin 1985). Strategic success stems from the organisation's capacity to harness the knowledge, skills, personal motivation and creativity of its professionals (Knorr Cetina 1999, Westwood 2006, 2008). The competitive advantage of a professional service firm is founded on its experts' ability to make good judgement calls, refine and hone its existing products as well as develop new ones (Maister 1997, Johnson, Scholes and Whittington 2007). Its ability to attract and retain these people will be based on its market reputation for adhering to professional values and culture (Westwood 2001, 2008). Regardless of pressures to commoditise much of the daily work that used to be carried out by lawyers (Susskind 1996, 2000, 2008), the law will continue to become more complex and society more diverse. Even with a major part of the service delivery becoming routinised and undertaken by para-legals, experienced practitioners will have to be involved in developing such systemisation and supervising its operations. While information technology may reduce the drudgery of routine practice, expert professionals will still be needed to make judgement calls in the most complex and high risk areas (Schon 1987), determined by the needs of each particular client that is grounded on trust and underpinned by ethics and wisdom (Webb 1998, Epstein 2006).

The foregoing analysis would suggest that four main types of job roles (based on a composite of Nelson and Trubeck's (1992(a), Mayson 2009, Westwood 2011 (b) and Susskind 2013) will be required:

1. the ‘expert specialist’ who handles high risk, high value and complex work,
2. the ‘manager’ of a legal services department skilled in systemising and supervising high volume, low risk work,
3. the ‘chief executive’ able to lead and manage a multi-faceted business operating in a complex, competitive externally regulated sector, and
4. the ‘in-house lawyer’ who provides commercially focused legal advice as part of a senior management team and outsources complex expert work to specialist lawyers.

Section 4 Implications in relation to the development of judgement

As argued in Chapter 2, the development of professional judgement depends on experience of practice and established and accepted standards and norms. The use of information technology to routinise low risk work has reduced the volume of this type of work allocated to qualified lawyers and trainees. Commodisation of such work through software systems is designed to ensure consistency of service delivery and discourage individuality of choice. This hampers the ability of firms to offer their trainees the opportunity to learn to make their own decisions (Raelin 2008). Yet, as the role of the qualified lawyer becomes more specialised, novices have to be able to make the progression necessary to perform well in relation to highly skilled work by developing the capacity to make complex decisions based on professional judgement that meets the standards and values of their authorising body (Schon 1991, Webb 1998).

The demands for increased specialisation at an early stage require a narrowing of the experience of trainees. This limitation may result in inattention to ‘phenomena that do not fit into categories of (one’s) knowing-in-action’ (Schon 1988: 73) and lead to an inability to make judgements based on an assessment of the wider context, which includes risk and commercial awareness.

Abel’s view (1989: 245) is that this ‘increasing specialization of both legal knowledge and role expectations has magnified the importance of first employers as socializing agents’ (cf. Boon, Duff and Shiner 2001). Faulconbridge and Muzio (2010) argue that the large law firms have become the ‘fifth actor’ in the professionalisation process with practitioners, users of professional services, regulators and universities playing the existing four roles. Given their alignment more closely to business corporations and accountants (Boon, Flood and Webb 2005), this may result in contradictions between espoused values and values-in-action (Schon 1987), especially for trainees when they start to apply their academically learned theory of prescribed ethical standards in actual practice (Parker et al. 2008). Students come to law school with the ‘hope to find a professional identity and with that a measure of personal fulfilment in their work’ (Kronman 1993: 374) and their early experience of practice often disappoints them (Rhode 2000). It is equally necessary to recognise the effect employers have on the identity, meaning, practice and community (Wenger 2009) of their novices in relation to both the cognitive and affective elements of the development of their professional judgement.

Section 5 Implications for UK legal education

Sullivan (2005: 27) states that professional education should allow novices to learn how ‘to think, to perform and to conduct themselves like professionals’. As suggested above, the structural and operational changes introduced by law firms to respond to market conditions has resulted in a move away from the traditional model of professional training and development based on the ‘master-apprentice’ relationship (Neighbour 1992, Raelin 2008) that provides the scaffolding for the experiential learning in the ‘swamp’ of professional practice (Schon 1987, Maughan and Webb 2005, Raelin 2008). This has been particularly the case in the large law firms (Faulconbridge and Muzio 2010) with their emphasis on contribution to fee earning and levels of hierarchy between trainee and equity partner (Galanter and Roberts 2008).

The increasing direct costs of higher education may inhibit equality and diversity of access and place more emphasis on the future employability of graduates. Universities are being asked to deliver students ‘ready to practice’ (ACLEC 1996, McCrate Report 1992, Pearce 1987) in line with the general demands being made on higher education to consider what it teaches and how it teaches it (Leitch 2006, Brown, Lauder and Ashton 2008). The provision of legal education is similarly becoming more commercialised and globalised with, for example, the College of Law being acquired in April 2012 by Montague Evans Private Equity. Economic pressures have led to a significant reduction in the number of formal training places at the same time as employers are expecting trainees to be capable of generating fees from their first entry into work (Boon, Flood and Webb 2005, Faulconbridge and Muzio 2010). With the disparity between the number of graduates and training places, some

may not be able to progress towards gaining admission as a qualified solicitor (Boon, Duff and Shiner 2001, Hardee 2012). The larger law firms offer a significant percentage of places, enabling them to negotiate that the content of vocational courses be tailored to their specific specialisms (Cook, Faulconbridge and Muzio 2012) and reflect their culture and values (Boon, Duff and Shiner 2001).

As employers place more emphasis on inter-personal skills and the ability to work effectively in teams (Maister 1997, Westwood 2003, Empson 2007), learning needs to be ‘collaborative, outward looking and goal oriented rather than an end in itself’ (Boon, Flood and Webb 2005: 481). Traditionally, the undergraduate experience concentrated on teaching knowledge of the law and less on the skills and attitudes needed to succeed in practice (Cook 1992, Re 1994) with the effect that ‘practical and the experiential have been undervalued as conceptions of legal knowledge’ (Webb 1995: 191). In the UK, this balance was adjusted to include transferable skills (Bell and Johnstone 1998, Stuckey 2007) and management skills (Sherr 2000) in vocational courses as well as offering students the opportunity to work in simulated learning environments (Maharg 2007) and law clinics (Nicolson 2008). Given the perceived impact of increasing commercialisation of the profession and the recognised importance of developing a sense of community and personal responsibility (Webb 1998), the Economides and Rogers Report (2009) commissioned by the LS recommended the inclusion of the formal teaching of ethics.

There is a growing acceptance that changes are needed to both the process of formal qualification and its content. For example, the LETR (2013) Recommendations suggest:-

- increased flexibility in relation to routes to entry, including the development of vocational apprenticeships to allow non-graduate entry,
- more emphasis on work-based learning,
- more focus on ethics and professionalism, and
- more emphasis on the skills of legal research, commercial awareness, communication and advocacy.

The SRA (2014) consultation in relation to developing new competences for solicitors to allow them to respond to future demands includes objectives to:

- increase flexibility for higher education institutions, vocational training providers and employers to come up with innovative and efficient ways of achieving the necessary outcomes, and
- ensure that the education and training system can adapt over time to take account of changes to legal services markets.

Overall Summary

The foregoing analysis identifies a number of the strategic changes influencing the legal services sector and the future role of the profession within it. While the nature of the job of a lawyer may be adjusting as elements of it become commoditised, inherently ‘legal interpretation is complex and situational’ (Nelson and Trubeck’s 1992(a): 181).

New entrants into the market with commercial drivers are likely to have limited interest in protecting the rights of the individual. If the profession is to maintain its distinct identity, it may need to re-emphasise its ‘community of practice’ that, at one and the same time, creates a

process and standards for entry, embeds ethical norms and allows its members to learn from their experience and defend the exercise of their professional judgement.

Ultimately, despite increased commoditisation, practicing as a lawyer cannot be ‘duplicated, mass-produced, imprinted or assigned... It is rather a social process that.... individuals must achieve through personal apprehension, thoughtful reflection and most importantly mindful action’ (George, Gosenhauser and Whitehouse 2006: 65). It is this process that enables solicitors to develop professional judgement.

Chapter 4 Methodology and Investigation

Introduction

Between July 2013 and September 2014 I undertook field work involving interviews with ‘large’ Scottish law firms, regional law firms in England and Wales and the regulators and related organisations in both jurisdictions. I also included two focus groups with Scottish trainees. I adopted this ‘bricolage’ approach (Walsh 2001) to allow me to obtain data about what solicitors had experienced (Kvale and Brinkmann 2009) in relation to the development of their professional judgement and the effectiveness of the PEAT 2 processes. The purpose of this empirical research was to enable me to answer my research questions by (a) comparing practitioners’ descriptions of professional judgement with the theories discussed in Chapter 2 and (b) identifying the effects that the changes in the work practices of solicitors discussed in Chapter 3 were having on the methods used to develop the professional judgement of legal trainees.

The rest of this chapter describes in more detail the method applied and its underlying objectives, particularly in relation to providing objectivity to balance my subjectivity as a practitioner researcher (Costley 2013), to support my Findings and Recommendation.

Section 1 Methodology

(a) The importance of ‘understanding of context’ and the role of the insider researcher

An essential element of this research is to be able to obtain ‘an authentic insight into people’s experiences’ (Miller and Glassner 2011: 133) by

obtaining accurate data about the effectiveness of the current processes being used to train legal trainees prior to formal admission to their profession. I therefore have been able to access 'their social reality' (King and Horrocks 2010) by being privy to confidential and commercially sensitive information about the internal operations and culture of law firms. To achieve this it is necessary that I understand the 'community of practice' of the legal profession in relation to (a) its context as 'our specific cultural and social frames of reference...(are) open to a range of interpretations' (King and Horrocks 2010: 9) and (b) how legal work is performed.

I have been a member of the Scottish solicitor's profession since 1976 and in addition, from 2000, an active participant in the design and delivery of trainee solicitor's learning experience. While this creates the potential for a 'bias' based on my own experiences of being trained to enter the Scottish legal profession and my pre-existing work with trainees (Yin 2009), it also enables me 'to obtain insider knowledge' (Costley 2013) and have credibility within this discipline. My membership of this 'community' helps overcome potential reluctance to allow external access to sensitive data because of the expectation that I will behave in accordance with the LSS's Code of Conduct (i.e. maintain confidentiality) as well as understand its values, method of operation and language. Like any profession, jargon is used and having worked as a solicitor for many years, I am familiar with this and how client work is handled. This enables me to ask relevant questions as well as probe for more detailed information so as to be able to 'understand what the participants are saying' (Creswell 2013: 20 cf. Anderson-Gough, Grey and Robson 1998). This enhanced appreciation of context ensures that I

obtain accurate and qualitative information during the interviews as it allows me to:

1. create rapport quickly so as to minimize the ‘distance’ or ‘objective separateness’ (Guba and Lincoln 1988:94) between the interviewer and interviewee,
2. ‘share enough experience....to define things similarly’ (Miller and Glassner 2011: 134),
3. check my understanding and obtain supplementary information by asking questions in language interviewees are familiar with (Sandberg and Pinnington 2009), and
4. compare my ‘own operative reality’ (Rudestam and Newton 1992: 38) with the explanations and examples that the interviews provide.

As argued in Chapter one, as an ‘insider researcher’ (Costley 2013), I cannot be considered a neutral figure and as a result, need to be aware and manage my own preconceptions and the effect of my presence on the gathering of data. This is an inevitable consequence of a practice enquiry of this kind and I have endeavoured to balance this with adopting methods and processes to ensure that objectivity is achieved.

(b) Ethical issues and confidentiality

Recognising that ‘in developing an ethical approach to insider research, the researcher needs to engage (her) own resources of knowledge and experience to help think through the conflicts, tensions and dilemmas that arise’ (Drake 2011:50), I determined that there are two inter-related aspects.

First of all, as a member of the LSS, I operate under the same professional standards as the research participants. As explained above, this provides them with re-assurance about my ethical stance (Kvale and Brinkman 2009) as well as a contextual appreciation of the issues that need to be addressed as ‘one’s expertise has to be understood in terms of its fit with the expertise of others’ (Costley 2001: 62). The second aspect relates to the ethical aspects of the data collection from employers so as to protect the anonymity of individuals and organisations in the write up of this research (Anderson-Gough, Grey and Robson 1998, Easterby-Smith, Thorpe and Jackson 2008) particularly when people are being asked to comment on the effectiveness of internal processes. It was important that I was sensitive to cultural issues, in particular that trainees may be reluctant to be seen to ‘criticise’ their current employers when they would like to obtain a job with them post-admission (Gray 2009).

To address all of this:-

1. before starting on the primary research, I obtained ethical consent in accordance with The University of Chester’s protocols,
2. I obtained informed consent from the employers through my preparatory contact with them that included a detailed explanation of this,
3. I anonymised the write-up of each case study to ensure the confidentiality of potentially commercially sensitive nature of the firm’s strategic and operational plans and processes,
4. I re-assured interviewees about the confidentiality and anonymity of comments from individuals, by including this in the written interview explanation given out to all

interviewees in advance and re-iterated by me at the start of each interview, and

5. I was sensitive to the possibility that the research might identify issues that could generate internal tensions in firms (Willig 2001: 82/83) so was careful about including specific examples that could be traced back to a specific individual.

In addition, I used individual interviews as they offered the potential to overcome worries about speaking in the presence of other people and helped me achieve ‘great depth and richness of the data.....the ability to ascribe a response to a single individual....the ability to develop a close rapport...and lack of overt peer pressure’ (Webb 1992: 124).

(c) Construct validity

As outlined in Chapter 1, all Scottish trainees complete the same formal higher education structure of the Foundation law degree and DPLP. By basing the research on firms currently training trainees for admission to the LSS offers construct validity as every trainee has gone through and been assessed on the same pre-determined acquisition of relevant and current legal knowledge, ethics and professional skills. In addition, PEAT 2 imposes standard review processes and on-line documents to be completed by each trainee before being eligible to seek admission as a solicitor. This means that all trainees undertake the same structure of training which is one of the variables described by Atkinson (2000) as necessary for the development of judgement. This allows this research to concentrate on gathering data in relation to the other two variables: the direction and support provided by employer firms.

(d) Multiple case studies

Given that the emphasis of the research is on how Scottish trainees are developing their professional judgement, I felt that it was important to investigate a number of employer firms as this would allow me to generate ‘information rich cases’ (Perry 1998: 793) that I could interpret in detail. I hoped that this method would provide me with specific findings and common practices to allow verification and triangulation (Eisenhardt 1989, Willig 2001) as well as make comparisons of ‘good practice’ so as to undertake a robust analysis that would provide ‘a rich, theoretical framework’ (Yin 2009: 54). A pilot case study was carried out to check the effectiveness of the process used and allow for refinements and adjustments to be made to it (Easterby-Smith, Thorpe and Jackson 2008).

The sample size (Perry 1998) was determined by the willingness of firms to take part in the research and reaching the point when no new information was being obtained: ‘theoretical saturation is simply the point at which incremental learning is minimal because researchers are observing phenomena seen before’ (Eisenhardt 1989: 545).

The reach of the research was extended to include firms of a similar size in England and Wales as (a) they trade under the same UK market conditions and (b) the SRA trainee processes impose a similar structure of LO, regular reviews and reflective logs. They therefore offered the opportunity to corroborate the Scottish findings as well as suggest that the findings may have a wider application.

(e) Semi-structured interviews

Given the importance of gathering data about how employers were using the PEAT 2 processes and the experiences of the trainees and their supervisors, I selected semi-structured interviews (Gray 2009) to obtain data as they allow ‘probing and flexibility.. continued checking of validity’ (Kvale and Brinkmann 2009: 249). Having worked as a solicitor, I have experience in their use and recognise that their logical framework of questions and answers facilitates the analysis of the information obtained. They also provided me with the opportunity to ask supplementary questions so as to elicit ‘evidence of the nature of the phenomenon including constraints and situations in which it emerges as well as insights into the cultural frames people use to make sense of these experiences’ (Miller and Glassner 2011: 137). I had intended to enhance construct validity by reviewing the completed PQPRs (Appendix 4) but it was not possible to obtain access to them because the on-line nature of the submission only provides the trainee with log-on permissions and passwords. This meant that it was important to obtain accurate descriptions of what activities they included in these to demonstrate achievement of the LO.

My underlying objectives of these interviews were to probe:-

- interviewees’ understanding of what is meant by ‘professional judgment’,
- how experienced practitioners describe how they developed it,
- what is being done to direct and support its development in trainees, and
- the effectiveness of the PEAT 2 formal processes and learning outcomes and of any additional learning support provided.

I used open questions such as ‘how’, ‘why’ and ‘what’ (Webb 1992) to enable me to obtain information about the use of the processes required under PEAT 2, how effective people found them and any additional support that had been developed. This helped me generate examples that added to my understanding so as to be able to ‘illuminate and extend relationships and logic among constructs’ (Eisenhardt and Graeber 2007:27).

To ensure consistency of approach and content of the data gathered, I structured the interviews around three separate lists of questions (Appendix 5), sent to the participating firms in advance (Rubin and Rubin 2005, Gray 2010, King and Horrocks 2010). These were tailored to (a) the person in charge of training in the firm (usually the Training Partner and/or HR Director), (b) the trainees (both first and second years) and (c) their direct supervisors and included:

1. How is the firm developing the professional judgment of your trainees?
2. Why do you think that is important?
3. How did you/are you developing it yourself?
4. How do you use the PEAT 2 processes?
5. How useful are they?
6. What do they support the development of?
7. What gaps or omissions do you think there are?
8. What additional support have you developed?
9. Why do you use this additional process?
10. How do you assess individual trainee progression?
11. Why do you think that this is important?
12. How do you explain this to trainees?

13.How do you train your supervisors to support their role in trainee development?

14.Are there any other points you would like to raise?

I felt that involving all three of these levels would allow me to verify and triangulate the data (Willig 2001, Yin 2009) with the Training Partners providing a strategic overview, supervisors as operational overview and individual trainees, their experiences of daily work-based learning. I was therefore able to compare the information obtained from the Training Partners and supervisors with the trainees' responses to determine their respective experiences and the resultant value of the support mechanisms.

I used the first case study firm to 'pilot' the process. In particular I wanted to test the clarity of my questions and their ability to inform and facilitate a discussion to ensure that the interviewees understood what they were being asked, as well as enable me to obtain data that was reliable and verifiable. In relation to the initial questions relating to professional judgement, the trainees said that they found it difficult to answer these as it was not a concept they were familiar with. I therefore expanded my explanation about the relevance of professional judgement at the start of each subsequent trainee interview.

As outlined in section (b) above, I had intended to complete all of the interviews on a one-to-one basis as I felt that it would provide reassurance about the confidentiality of the data obtained. However, Firm 1 asked me to interview their trainees together (three), Firm 2 to interview all of their trainees (six) as a group, Firm 3 to interview their trainees in two groups (three in each), and Firm 4 that I split their trainees into two groups (three and two respectively) and interview their

supervisors together (three). All of this I agreed to do and observed that this process provided a discussion and comparison of experiences that displayed agreement and similarity of views. However I found it more difficult to follow-up and probe individual responses.

I chose not to tape record the individual interviews for a number of reasons. First of all, solicitors are trained in the use of semi-structured interviews where contemporaneous hand-written notes are taken that are subsequently used as a reliable source, so I felt that the interviewees would be comfortable with this process. Secondly, I have had considerable experience of using this method of data-collection. Thirdly, I wanted to be able to review my notes at the end of each interview to ascertain what data had been provided and identify any new information obtained so that I was able to adjust the subsequent interviews to probe these areas. Finally, as trust is an essential element of the relationship between researcher and interviewer (Lincoln and Guba 1985, Perry 1998), I felt that the use of tape recording would inhibit this, as its use would make it less likely that I would obtain candid responses especially from the trainees as I was interviewing them in their workplace.

(f) Focus groups

I was aware that regardless of the emphasis I placed on confidentiality prior to my interview with the trainees, they knew that I was to prepare a written summary of my findings for their employer. I therefore selected the additional method of conducting 'focus groups' with trainees to allow me to adopt the same structure for the questions asked of them but in a neutral territory (Easterby-Smith, Thorpe and Jackson 2008).

Having observed the interactions in the group interviews, I felt that there

would be value in enabling the trainees to reflect, discuss and share their experiences with their peers. As a result, I approached and obtained agreement from two of the independent networking organisations whose membership is solely trainees and newly qualified Scottish solicitors to hold an evening focus group with their members. The same questions that were used in the case study trainee interviews were distributed to those attending in advance. I recognised the limitations of this method for gathering comparable data to the case studies as I would not be able to triangulate their comments as I had no access to their employers and that it was likely that this process would include trainees working in-house, in the public sector and in smaller law firms. However I felt that it would allow me to compare the data I obtained from trainees in their workplace with that 'out of the office'. The data obtained displayed similar concerns with the effectiveness of the PEAT 2 processes in particular.

(g) Analytical framework

Given the complexity of obtaining and analysing data in these real life contexts, the methods described above provided me with an analytical framework that achieves reliability and validity (Willig 2001, Yin 2009) as it included:-

- a) careful considerable and thoughtful posing of research objectives and related questions,
- b) adoption of formal and explicit procedures when undertaking the data collection,

- c) recognition of both my expertise of the researcher in relation to my understanding of the interview answers and awareness of cultural issues as well as my bias and own values (Costley 2013),
- d) maintaining the confidentiality of data with interviewees in individual firms, across the case studies and in the final write-up,
- e) recognition of the effect of employer or peer pressure on the effect of openness and richness of interview data, and
- f) triangulation of data within firms as well as between firms so as to ‘arrive at a better understanding of what is ‘really going on’’ (Willig 2001: 81).

In relation to the subsequent analysis of the data obtained, after the conclusion of all of the interviews for each case study firm, I reviewed my annotated contemporaneous ‘field’ notes (Eisenhardt 1989), considered the comments, examples and illustrations provided and wrote up a draft ‘case study’ summary. This draft was sent to the firm for approval in relation to accuracy. In relation to the other sources of data (including the focus groups), I adopted the same method of taking contemporaneous ‘field’ notes, reviewing and annotating and writing up the relevant interviews.

Recognising that the ‘process of building theory from case study research is strikingly iterative’ (Eisenhardt 1998: 546), I used Yin’s (2009) four criteria for determining the quality of research designs: construct validity (through the focus on Scottish law firms and their use of the PEAT 2 processes), internal validity (balancing my understanding of being part of this community with the researcher’s own bias), external validity (sourcing comparative data from equivalent law firms in

England and Wales and employing the same data collection and interview structure to all) and reliability (emphasising confidentiality at all levels and at all stages).

(h) Providing value to the participants

A final element that I wanted to include in my research method was to provide value to the participants in relation to the effectiveness of their current training processes. Firstly, I hoped that by talking through and ‘making sense of their experiences’ (King and Horrocks 2010: 17) that employers and trainees would identify previously unspoken and formally unrecognised examples of learning and ‘good practice’. To assist this, I sent each firm a written draft of their resultant case study for review and comment, summarising in particular the support that the interviewees described as developmental as well as indicating aspects that were not fully embedded and/or understood (Kvale and Binkman 2009: 262). Secondly, I suggested to the firms that had achieved LSS accreditation of their PEAT 2 training that my ‘report’ could be used as formal external evidence for their annual evaluation of the effectiveness of their programme that they send to the LSS.

(i) Limitations of the research

It is relevant at this point to review the limitations of this research. The premise established in earlier chapters is that the development of professional judgement is complex and determinant on a variety of factors that include exposure to practice and role models. A corollary to this is that it takes time to develop and it may be that the two year time

frame of the training contract is too short to be able to achieve this, rather than a reflection of the trainees abilities and attributes and/or that of their employer firm's commitment to it.

However, this would be an important finding as, on completion of their training period in both Scotland and England and Wales, trainees are granted an unrestricted practising certificate without any requirement for any subsequent formal assessment of their competence.

Section 2 Practical Plan of Investigation

This section explains the practical plan of investigation I used to achieve the stated objectives of the research.

(a) Scottish case studies

I selected 'large law firms' as the focus of my research for a number of reasons. First of all, they are described as the 'fifth actor' in legal education (Falconbridge and Muzio 2010) and employ a significant percentage of the annual intake of trainees. Secondly, they have already responded to the pressures of increased specialisation by growing in size and changing their operational structures (Galanter 1983, Galanter and Roberts 2008) and thirdly, given the numbers of trainees they employ, it is likely that there is a formal structuring of the work allocated to them.

As the LSS registers its members as individuals, it was not possible to obtain definitive data on the number and size of employer law firms. Data obtained from their annual survey into the performance of firms

(LSS 2012(b) states that of the 1237 firms in Scotland in 2012, 634 were sole principals, 477 had 2-4 partners, 82, 5-9 partners and 44 over 10 partners. Of the total 10,599 enrolled solicitors, 3634 solicitors worked in the '30 biggest firms' and 2057 solicitors worked in-house. Data obtained from the LSS's Fair Access to the Profession Report (LSS 2013(b)) indicated that, in 2012, there were 42 firms in Scotland with 11 or more partners. I therefore adopted this as the definition of a 'large law' firm for the purposes of this research. In relation to Scottish trainee employment in 2013, the number of individuals who commenced their formal training that year was 476. By location, employers in Edinburgh employed 40.3% of the trainees, Glasgow 31.1%, Aberdeen 10.3%, and Dundee 4.6% with the remainder of 13.7% spread over the rest of Scotland. A total of 11.5% were employed by commercial companies, in-house legal departments, Scottish Government, local authority councils and the Crown Office. Firms of over 11 partners employed 260 trainees (with firms of over 31 partners, employing 167 trainees, 21-30 partners, 17 trainees and 11-20 partners, 76). Firms with between 6-10 partners employed 39, between 2-5 partners, 78 and sole practitioners, 55 trainees. The LSS was not able to provide details of the names of employers due to requirements of the Data Protection legislation. However, it was possible for me to identify the names of firms by partner size by examination of the Scottish Law Directory (SLD 2012) and create a list of those with more than 11 partners. I contacted these by email between July 2013 and March 2014 asking if they would like to take part in the research. A total of seven firms, all based in Glasgow and Edinburgh agreed to do so with my research carried out with them between August 2013 and September 2014.

Given the percentage of trainees employed in an in-house department, I determined from the statistics that the Scottish Office, and the Crown Office could be regarded as ‘large’ employers so I contacted them by email in March 2014 asking if they would like to take part in the research. Both declined to be involved.

The full data obtained from each of the case studies is detailed in Appendix 6 with a total of 60 individuals interviewed. Figure 1 details the numbers of the Training Partners/HR Directors, supervisors and trainees interviewed in each firm.

Figure 1: Number of semi-structured interviews in Scottish law firms (n=60)

	Training Partner/HR Director	Supervisors	Trainees
Scottish Case study 1	2	3	5
Scottish Case study 2	1	3	6
Scottish Case study 3	2	3	6
Scottish Case study 4	1	3	5
Scottish Case study 5	1	1	3
Scottish Case study 6	2	2	5
Scottish Case study 7	2	1	3
Totals	11	16	33

Once the initial contact had been made, I followed this up with either a telephone call or pre-meeting with the Training Partner/HR Director to:-

- discuss the details of the process,
- agree the format of the interview and suggested lists of questions,

- provide re-assurance in relation to confidentiality, and
- access written documents relating to any additional trainee support such as in-house training programmes.

Following on from this, the interview timetable was agreed based on one-to-one interviews with:-

- the Training Partner and/or HR manager,
- individual trainees (both first and second years), and
- their direct supervisors.

(b) England and Wales case studies

As indicated above, I expanded the geographical and jurisdictional reach of the case studies to include law firms in England and Wales. I felt that, as the education and training structure and processes used there (summarised in Chapter 1) mirrored those used in Scotland, this offered direct comparisons of the data obtained from the Scottish firms thus maintaining the construct validity of the research and its reliability. In addition, these firms operate under the environmental pressures identified in Chapter 3, including increased demands from clients in relation to service delivery as well as changes to the work content of solicitors and could potentially offer illustrations of how they were responding to these.

I recognised that having more than 11 partners would not be regarded as a 'large firm particularly in London and that English regional firms offered better direct comparators to the Scottish firms (Willig 2001). Applying the same definition of 'large law firms' (i.e. those of over 11 partners), I contacted 15 regional firms I had worked with on a pilot Post

Graduate Certificate in Legal Practice Management. I decided to select this data sample as I was familiar with their internal approach to training and had established their trust in relation to confidentiality and probity which meant that I was comfortable that I would gain access to reliable data (Willig 2001). It also allowed me to conduct these interviews by telephone, rather than face-to-face as with the Scottish case studies, without diluting the quality of the data obtained.

The same methodology was applied with the list of questions amended to refer to the SRA required processes and content. Interviewees took place in January and February 2014 with three case studies, based on 10 interviews, completed. The data obtained from these is detailed in Appendix 7. Figure 2 details the numbers of the Training Partners/HR Directors, supervisors and trainees interviewed in each firm.

Figure 2: Number of semi-structured interviews in English law firms (n=9)

	Training Partner/HR Director	Supervisors	Trainees
English Case study 8	1	1	2
English Case study 9	1	(1)*	1
English Case study 10	1	1	1
Totals	3	2	4

* Training Partner is also the supervisor

(c) Additional UK Legal Profession data sources

- (i) As indicated above, I was concerned that trainees may be reluctant to speak openly about the support and training they receive from their employers. I contacted the Trainee and Newly Qualified Solicitors' Society and the Scottish Young Lawyers' Association and agreed with them that I would hold a 'focus group' in May 2014 (Glasgow) and June (Edinburgh) 2014 respectively with their members posing the same questions as used in the case study interviews. The results are detailed in Appendix 8 and involved 13 trainees in total.

The data collected mirrored that that was obtained from the case study firms, thus confirming its validity and reliability. Figure 3 details the numbers of trainees interviewed in each firm.

Figure 3: Number of trainees from Scottish firms participating in the focus group (n=13)

	Organisation	Trainees
Trainee Group Glasgow	Trainee and Newly Qualified Society	5
Trainee Group Edinburgh	Scottish Young Lawyers Association	8

- (ii) When discussing the theme of my research with my supervisor, it was agreed that I would seek the views of the LSS in relation to the importance of and the development of professional judgement. In September and November 2012 respectively, I

interviewed both their Director of Education and Training and Director of Regulation and posed specific questions (which became questions 1-3 of the case studies interviews) to them. They suggested that I ask these questions of Marsh the professional indemnity insurers for the LSS's Master Policy (December 2012), as well as the Scottish Solicitors Discipline Tribunal (March 2013) (dealing with conduct complaints) and the SLCC (February 2014) (dealing with service complaints) as all should be able to identify examples of failures to exercise professional judgement. These interviews were completed using the same process of sending an initial outline by email explaining what I wished to cover with them, followed up with a direct meeting or telephone call. In addition, I posed these questions to the LS (October 2012) and the SRA (March 2014) and CILEx (March 2014), the professional body and regulator of para-legals, adopting the same process. Full details of the data obtained from these are provided in Appendix 9. A total of 11 people were interviewed. Figure 4 details the organisation and the number of individuals interviewed.

Figure 4: Number of interviews with UK legal professional bodies, regulators and related organisations (n=11)

Organisation	Individual
LSS	Director of Education
LSS	Director of Regulation
Marsh, agents for Master PI Policy	4
SLCC	1
Scottish Solicitors Discipline Tribunal	1

CILEx	1
LS	1
SRA Education and Training Unit	1
Total	11

Summary

The overall aim of the methodology I adopted was to enable me to focus on the context of people's experiences so as to facilitate a 'reasoned judgement about the extent to which the findings of one study can be used as a guide to what might occur in another situation' (Kvale and Binkman 2009: 262). All of the data was obtained using the same process thereby allowing me to build a theory that is 'more robust, generalizable and testable' (Eisenhardt and Graebner 2007: 27). In total, 93 individuals contributed to the research.

Chapter 5 Research findings: perceptions of the importance of professional judgement and the apprenticeship model

Introduction

This and the succeeding chapter seeks to answer both of the research questions through analysing the data that was obtained from the Scottish case study interviews (described in detail in Appendix 6), the England and Wales case studies (Appendix 7), the two trainee focus groups (Appendix 8) and the interviews with the UK legal professional bodies, regulators and related organisations (Appendix 9). Illustrative quotes are included in italics with abbreviations of ‘TP’ for Training Partner, ‘HRD’ for HR Director, ‘S’ for supervisor and ‘T’ for trainee together with the number of the relevant case study and ‘FGG’ and ‘FGE’ respectively for the focus group data (with ‘FGG’ relating to the Trainee Group Glasgow and ‘FGE’ to the Trainee Group Edinburgh). In relation to quotes from Appendix 9, the individual source is named.

To assist with the analysis process as well as provide an overview of the source of the data obtained, I prepared a Table (Appendix 10) that matched the questions used during the interviews with its source. The symbol ‘√’ indicates that a positive response was obtained from all of the interviews with examples and illustrations provided whilst ‘N’ indicates a negative response to that question from the interviews. This illustrates that there was consistency across both the Scottish and England and Wales case studies in relation to the commentary on the formal structure of the training (both LSS and SRA). Sub-table (a) lists the additional support that employers described was provided by them to assist their trainees’ development and sub-table (b) lists additional data that was obtained from the case study interviews. Again there was consistency

across a number of the case study firms reflective of the fact that all were ‘large law firms’ and had similar internal operational structures, specialisms, clients and systems. In addition, they are both applying the formal processes required by the LSS and SRA.

The first section of this Chapter will analyse the answers given to the initial questions posed in relation to the development of professional judgement and why it is important.

Section 1 The importance of professional judgement in the UK legal profession

This section concentrates on analysing the case study data (Appendices 6, 7 and 8) in relation to the reflections of experienced solicitors and trainees on the importance of professional judgment and how it is developed, supplemented by the interviews with the UK legal professional bodies and regulators detailed in Appendix 9.

(a) The importance of professional legal judgement

Experienced solicitors confirm the commentary in Chapter 2 that the exercise of professional judgement is at the ‘heart of professional practice’ (Fish and Coles 1998: 254).

TP1 ‘The development of the judgement of trainees is:-

- 1. important as part of their own career development,*
- 2. important for the firm as we are delivering a service so we want our people to be able to exercise their judgement professionally,*

3. *very important for the profession as a whole that solicitors are able to form a judgement, and*
4. *becoming even more so to allow us to be able to respond to what law firms will look like 10 years from now. They will need both legal judgement and entrepreneurial flair – lawyers will need to be specialist advisors so will need to understand that environment and what clients come to you for’.*

TP3 ‘It’s what clients are paying us to do, that’s what clients are buying from us - the unspoken and crucial part of being a lawyer - I have to make a judgement all of the time - clients can get the law but what they want from us is our judgement, our recommendation’.

S3 ‘Exercising my judgement is the most important part of my job - I need to know and understand that client otherwise I am not worth the money’.

S6 ‘it is what our clients expect of us - in dispute resolution for example, we use judgement all of the time - that is what we are about in this firm’.

S7 ‘if we are not offering clients’ our judgement, then we become mere theorists’.

In relation to the data obtained from the trainees, in the absence of any overt reference to ‘developing professional judgement’ in the PEAT 2 LO, the trainees interviewed have limited recognition of ‘professional judgement’ as a distinct competency. However, they are able to explain in the context of giving client advice and risk management.

T4 'what the firm is being paid to do yet it is not an exact science - have to consider the risks of different routes, commercial interests of clients and costs - no two clients are exactly the same so needs to be tailored to those circumstances and you have to be careful about the advice you give'

Despite its omission from the LO, the professional bodies recognise its importance. For example, the LSS's Director of Education and Training and Direction of Regulation both state that they see that the development of the ability to exercise professional judgement is an important underpinning aspect of the role of a solicitor and as a result should be part of pre-admission training. They describe that it is assumed to be included in the LO that relate to 'professionalism' and 'problem solving' because it involves both competence in the law and the ability to 'know the client' so as to apply 'practical realism'. This is confirmed in the commentary obtained from the Scottish Solicitors Discipline Tribunal (dealing with complaints in relation to conduct) and the SLCC (dealing with service complaints).

The SRA has included it in its recent consultation document 'Training for Tomorrow: A Competence Statement for Solicitors' (SRA 2014(b) where Section A is headed 'Ethics, professionalism and judgement'. A member of its Education and Training Unit comments:

'We want them to develop judgement and critical thinking in live situations so it is important for employers to recognise that to achieve this they must be given some exposure to direct client responsibility. Our Work Based Learning pilot showed the importance of this as well as 'critical mentoring' (i.e. developmental constructive feedback and support) to move them

up levels of judgement from level 1 (very little judgement), level 2 (make judgement with support), and level 3 (make their own judgement). We can't only focus on processes as we can't reduce something that is very personal and involves integrity to an arid exercise. As a result, ethics and integrity have to inform their judgement – risk must be understood in that context as otherwise it misses a key element of professionalism. Solicitors (unlike other legal roles) have to be able to make a number of connections between different elements of practice so it is really important that we recognise this'.

Given the growing importance of the role of para-legals, and the recommendations of LETR (2013) in relation to expanding routes to entry discussed in Chapter 1, the views of the CILEx are relevant here. Their Practitioner Authorisation and Supervision Manager describes that they see the ability to exercise professional judgement appropriately as an important part of skill progression:

'CILEx's Professional Skills units at L3 and L6 repeat this process in relation to the key legal professional skills used by lawyers in everyday practice. 'Undertaking and applying legal research' at L3, for example, becomes 'judging the nature of a finely balanced response to a practical, complex legal problem' at L6. Similarly, 'understanding good client care behaviours' at L3 and 'being able to demonstrate these' become, at L6 'the ability to act with degrees of tact and diplomacy in response to a multi-faceted and complex client situation'. These are the ways, then, in which trainee legal executives begin to get to grips with the exercising of professional judgement within legal activity'.

(b) The importance of an appreciation of context

The experienced practitioners recognise both the importance of being able to apply individual judgement in the specific context of each client situation and the complexity of enabling their trainees to be able to manage such subjectivity and ‘uncertainty’ (Schein 1972, Schon 1987). For example, while the use of open-plan working allows trainees and supervisors to observe each other, pressure of client work limits the time supervisors have to make their decision making process explicit with the trainees left to hear ‘snatches’ of what is being said, without necessarily being aware of its context.

S2 ‘we certainly look at risk management and client service quality but not sure that we want the trainees to be ‘exercising judgement. We would prefer that they did what they were asked ...at the stage they are at do they have enough experience to make a judgement call?... have no life experience so difficult for them to understand what is involved in solving ‘messy problems’.’

TP5 ‘Professional judgement is the most difficult aspect to supervise and develop as all of the trainees start from a different platform so has to be done on a one-to-one basis. My own learning experience was ‘thrown in the deep end’ without any tangible or constructive support which I found very difficult and stressful so I am determined that our trainees do not have to endure that’.

TP/S9 ‘Ultimately that is what the job is all about .. we’re professional advisors so have to make a judgment about what advice is relevant to particular situation and that client plus a lot

of non-legal factors need to be brought in when advising the client – no single black or white answer. We need always to consider the bigger aspects of professional judgement and not simply respond to the immediacy of the time pressure - so overall it is essential to make trainees think about the client situation and wider issues involved. We develop judgement of our trainees by labouring the point when a particular issue or situation arises... The examples we use tend to be about 'risk' first of all and then widen the discussion out to explain that they need to get into that client's head, how best to get that client to engage and respond, because as a firm we feel that it is really important to get that aspect right'.

TP10 'We want them to develop a wider 'commercial' picture - professional judgement is brought about by experience and direct exposure on the job. We want them to do more than just research the law - we want them to apply the law in the context of that client. We want to appreciate that each client has a different appetite for risk'.

Trainees describe that seat rotations and the degree of complexity of the work of specialist departments makes it difficult to transfer the application of their learning.

T8 'The training contract is very, very short – coming from an academic background it is really important to develop your judgement about how to approach a client and what going to say to him – most clients come to see a solicitor because they don't know what their options are so it is essential to develop and offer

range of options for each client and help them make best decision for them’.

The importance of an appreciation of context (Aaronson 1998, Beckett and Hager 2002) is illustrated by the interviews with experienced claims adjusters of Marsh, the company that administers the professional indemnity policy that covers all Scottish solicitors. They explain that, in their experience, *‘every single claim arises from the application or misapplication of professional judgement’* with changes in established practice directly affecting what would be acceptable (and defensible) judgement. The principle underlying cause of problems in their view is a failure to appreciate a risk:

‘Professional judgement happens through the modelling provided by more experienced people –it needs to be used to be developed through interpretation and to do that needs ‘repeatability’. The ethical part relates to feeling part of belonging to that group which makes the person not to want to let people down and sets the parameters of what to do’.

(c) The importance of the apprenticeship model

When asked how they developed it themselves, practitioners support Cervero’s (1992) criteria for facilitating professionals’ ability to make the best judgements that include advancing it through collaborative social interaction and construction of knowledge within a community of practitioners. They speak of the importance of ‘role models’ being prepared to invest time explaining what they do and most importantly why they made that particular choice.

S2 'At beginning, I tended to copy the actions and approach of senior colleagues. However as I became more confident myself, and my knowledge and ability increased, my critical and analytical skills improved so I felt more able to adopt my own approach'.

S3 'I learned most from working under the tutelage of an experienced practitioner who took me under his or her wing and explained things to me - for example, the real value of having a more senior lawyer who regularly at the end of a working day stayed on to give me a 'gift of her time' by sitting with me and explaining different aspects of client files - both the commercial and ethics of them as well as showing me that she was willing to invest that time in me'.

S6 'I learned through having a good mentor who heavily supervised my case load and could be quite critical. I eventually gained enough experience and confidence to be able to defend my reasoning with her rather than simply just do what she said. That in itself gave me confidence that I knew what I was doing'.

S6 'I learned to develop my judgment 'on the job' and it was entirely down to the people that I worked with. In addition, I was given a lot of responsibility when I was a trainee for example, running an important Court of Session case with Senior Counsel phoning me to discuss what to do'.

S10 'I suppose that I developed my own judgement the same way as everyone else of my age - by watching what more experienced people were doing. It was a lot easier then because solicitors were generalists - perhaps too much so with the result that people

dabbled in areas that they shouldn't have - I can think of quite a few problems that arose because partners tended to work as individuals rather than developing specialisms so that if one of their clients needed something done for example, selling a business on retirement, then the partner just went ahead and did it. Sometimes as a result I got handed a file that I didn't know what to do with and the partner didn't know either yet kind of expected that I should know as I had just got my law degree so I should have known what the law was'.

The trainees recognise the value of the apprenticeship model, for example, by describing that there is not enough opportunity to shadow and observe more senior people.

T6 Your judgement comes with experience – you begin to recognise what is acceptable – for example in personal injury the first time you get an offer from the other side, you check the cases and the law, and then you learn from working on client files what is a 'good offer'.

FGE 'I am not really given any chance to develop my judgement as I don't have enough close contact with experienced people and if it is an 'easy' question, newly qualified assistants will just tell you what to do and if you ask why, they don't either know or don't have the time (or inclination) to tell you. If it is a more difficult question, I have had assistants saying to me 'don't bring it to me – I don't want it on my desk'.

They also describe the importance of becoming a member of the 'community of practice' through being seen as someone worth investing

time in and of developing personal confidence through being ‘trusted’ to being given increasing levels of autonomy and responsibility.

T9 ‘The best way to develop your confidence is to start working on as much client facing work as you can get....at the end of the day, it’s all about how well you get on with people’.

Summary

This section supports the analysis in Chapter 2 that professional judgement is developed through work-based learning founded in a ‘community of practice’ (Wenger 1998) that prescribes standards of behaviour and performance and provides a training process that inducts novices into a professional discipline by allowing them to learn about the application of technical knowledge in the context of their practice and in particular, Cervero’s (1992) argument that it needs to be facilitated through supportive coaching and modelling. It affirms the importance of being able to manage uncertainty (Schon 1987, Sadler-Smith, 2008) and building personal and career confidence (Styhre 2013). It confirms that the exercise of professional judgement is seen as an important part of the effective functioning of a solicitor admitted in the UK.

The model of apprenticeship facilitates direct observation of the novice of the master and the master of the novice (Raelin 2008) as well as ongoing feedback and responsiveness (Svensson 1990, Atkinson 2000, Sullivan et al. 2007). This ‘legitimate participation’ (Lave and Wenger 1991) provides verification by the master that the novice is capable of demonstrating the necessary attributes for formal admission. It also enables the novice to learn the constituent elements employed in

determining the choices available and what is acceptable in relation to established practice. The main methods of learning are (a) experiential (Mezirow 1991) via the ‘zone of proximal development’ (Vygotsky 1978) of early practice with increasing levels of responsibility and complexity being given as the novice develops and (b) apprenticeships that provide the building blocks of the formation of identity and the integrity of professional character (Faulconbridge and Muzio 2010) as well as recognition of and familiarity with apposite career choices. The next section will therefore analyse the strategic effectiveness of the apprenticeship model.

Section 2 Effectiveness of current apprenticeship models

This section considers the effectiveness of the apprenticeship models of the case study firms using Fuller and Unwin’s (2003) model of expansive and restrictive continuums of apprenticeship experience (described at page 39) that narrates factors that can either (a) enhance the apprentice’s breadth of learning and entry as a full member of a ‘community of practice’ or (b) limit it to being trained for the immediate job in hand. This mirrors the enabling factors of apprenticeships described by Raelin (2008: 12) summarised in section 4 of Chapter 2 (cf. Lave and Wenger 1991).

This model is chosen for this section of the analysis because its structure provides a method to offer a strategic overview of the processes required by the LSS and SRA. Each element of these will be considered in turn in relation to the findings. The heading that more closely fits the analysis is underlined.

Figure 5: The effectiveness of the apprenticeship model in the legal profession, using Fuller and Unwin's (2003) expansive and restrictive continuum

Participation in multiple communities of practice inside and outside the workplace v Restricted participation in multiple communities of practice

Firms expose trainees to a number of aspects of legal work and rotate them around departments. Firms 2, 3, 4, 6 and 7 use external secondments (usually six months) to large clients, mostly financial service organisations.

Primary community of practice has shared 'participative memory': cultural inheritance of apprenticeship v Primary community of practice has little or no shared 'participative memory': no or little tradition of apprenticeship

As an apprenticeship period of two years has been the historical requirement for entry to the solicitors' profession in the UK, all the firms have a shared participative memory and a cultural inheritance of apprenticeship as a model of training. In addition, as the supervisors and Training Partners require to be admitted solicitors, they have been trained in this method and are therefore familiar with it.

Breadth: access to learning fostered by cross-company experiences built into programme v Narrow: access to learning restricted in terms of tasks/knowledge/location

Seat rotations are used by all firms (except Firm 5) to provide exposure to a number of departments and types of client work. Firms 2, 3 5 and 6 provide in-house skills training sessions. Firms that have geographically

spread offices send their trainees to work in these different locations. Firms 2, 3 and 5 require their trainees to complete evening work in the CAB, legal advice agencies or law clinics.

Access to range of qualifications including knowledge-based vocational qualifications v Access to competence based qualification only

This apprenticeship is limited to achieving the LSS and SRA vocational requirements.

Planned time off –the-job including for college attendance and for reflection v Virtually all-on-job: Limited opportunities for reflection

PEAT 2 requires 40 hours of accredited training and 20 hours non-accredited training with all of the trainees confirming that they are allowed the time to complete these. However, all of the supervisors and trainees were unspecific about the purpose and value of reflection as well as commenting on the lack of effectiveness of the on-line reflective logs and diaries.

Gradual transition to full participation, Apprenticeship aim: rounded expert/full participant v Fast- transition as quick as possible Apprenticeship aim: partial expert/full participant

All of the Scottish firms and Firm 10 (England and Wales) provide an intensive induction training programme for their trainees that includes cash room compliance and IT procedures. All of the firms described that trainees were part of their service delivery and expected them to contribute to fee charging to clients as quickly as possible even within each seat rotation. All of the trainees stated that they felt there is too

much pressure on them in relation to achieving chargeable hours and limited opportunity to shadow and observe more senior people. In relation to seat rotations, these were usually assigned to suit the firm's client workloads rather than as a planned development choice for that trainee.

T9 'Some of the offices do more expert work than others so it is important to work out which partners you want to impress and push yourself in front of them. Getting seat rotations to suit what you want to do (or think you want to do when you start out) is not that easy as people are generally very busy and not every department seems keen on taking the time to train trainees'.

Post-apprenticeship vision: progression for career v <u>Post-apprenticeship vision: static for job</u>

All of Training Partners and HR Directors interviewed spoke of their wish to keep as many trainees on after qualification as they could as they had invested time in training them up to be able to seek admission. Firms 2, 4, 5 and 6 included their trainees in their firm-wide appraisal process, explaining that they want their trainees to be set targets that relate to the firm's business objectives as well as discussions around longer term career aspirations. However, all of the trainees (including those in Firms 2, 4, 5 and 6) stated that they are uncertain about what jobs would be available for them after they complete their two year contract. For example, two months before the end of their trainees' contracts, Firms 5 and 6 had not made a decision about what newly qualified positions would be available with the result that when these were offered, their

trainees explained that they would soon have to apply for a job elsewhere or would be restricted to where these openings were.

TP9 'We always look at individual performance and how things are working out for each one. However keeping them on depends on whether we have a qualified job for them and that all depends on market conditions and whether we have a personnel gap because of maternity leave or illness'.

FGE 'I qualify in a few months and don't know yet if I am to be kept on. I worry about applying for a 'newly qualified' job as I feel that I have limited experience and direct responsibility so I am not confident that I really know why I am doing something'.

<p>Explicit institutional recognition of, and support for, apprentices' status as learner v <u>Ambivalent institutional recognition of, and support for, apprentices' status as learner</u></p>
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The data obtained indicated that the expectation that trainees charge their time to client work limits the time they have to learn (apart from completion of the required 60 hours of training). In Firm 3, their HR Director mentioned that she is concerned that there is too much emphasis on the trainee being a fee earner from day one with the result that time cannot be written to anything that is not client chargeable. She had instigated an internal review project to look at 'what are trainees here to do, for example do meaningful legal work?'. In addition, all of the supervisors stated that daily work pressures can result in them not giving trainees sufficient immediate support with the good ones 'just being left to get on with it'.

T10 'I have not really had 'two years' experience. There is as a lack of appreciation in general terms of what a trainee is capable of in some departments – for example, in one seat I did little more than ad hoc tasks plus one of the solicitors went off on maternity leave with the result that everyone seemed too 'busy'.

Named individual acts as dedicated support to apprentices v No dedicated individual ad-hoc support

As it is a requirement of both the LSS and SRA, all trainees have a named supervisor. However, all of the trainees described that some are more skilled than others. When this was discussed with the Training Partners and HR Directors, they agreed that some were 'naturally better than others' but stated that their supervisors were offered no formal training when asked to take on this role.

Apprenticeship is used as a vehicle for aligning the goals of developing the individual and organisational capacity v Apprenticeship is used to tailor individual capability to organisational need

All of the firms described that their trainees were part of their service delivery so their emphasis on employing them is to ensure that they are trained to meet their organisational need. For example, the Training Partners in Firms 4 and 6 spoke of the importance of ensuring that their trainees fitted into their culture and understood 'our way of doing things'.

TP6 *‘The trainees here have a proper job to do as we feel that the best way to learn is through practical experience – not just watching other people do it. It was really a business driver to obtain accreditation for our own Trainee training as we wanted a programme that would work for our business. We use secondments to clients to help to consolidate our relationship with them’.*

Apprenticeship design fosters opportunities to extend identity through boundary crossing v Apprenticeship design limits opportunity to extend identity: little boundary crossing experienced

Firms 2, 3, 4, 6 and 7 send trainees on secondments but described this as a client relationship tool rather than as a learning process for the individual trainee. The LSS and SRA training contracts require trainees to remain with the one employer over the whole period.

Reification of apprenticeship highly developed (e.g. through documents, symbols, language, tools) and accessible to apprentices v Limited reification of apprenticeship, patchy access to reificatory aspects of practice

Reification is achieved through the formality of the PEAT 2 and SRA training processes, including LO and review documents. However, all of the interviewees described that these were of limited developmental value and completed with token engagement.

Summary

This analysis indicates that the apprenticeship models being used by the legal profession in Scotland, and England and Wales are more restrictive than expansive as considerable emphasis is placed on ensuring that trainees are able to charge their time to clients. In addition, where the expansive elements are being achieved, in most cases, this is to comply with the externally imposed requirements of the LSS and SRA rather than as part of a 'learning culture' within the firm. In addition, a number of these processes are not working effectively. For example, the formal reviews are described by both supervisors and trainees as repetitive with limited value in relation to completing them. The on-line logs are not enabling reflection and the firms that use secondments describe the rationale behind them is to build loyalty with clients rather than to extend the boundary spanning or range of identity of trainees.

Career progression is dependent on being offered a newly qualified position and that is driven by the firm's needs. Despite taking on and allowing the trainees to complete their LSS and SRA training requirements in relation to hours and logs, there seems to be a disconnect between the strategic needs of the firm to develop and retain talent and the training of trainees as there appears to be no integration of pre-admission experience via the seat rotations and the need for a newly qualified person in individual departments.

Internal training is described as being designed to ensure that trainees understand 'our way of doing things' which confirms Faulconbridge and Muzio's commentary (2010) on the influence on the formation of identity of early years of professional practice.

Chapter 6 Research findings: the effectiveness of trainees learning from experience and the effectiveness of PEAT2

Introduction

This chapter continues the analysis of the case study and focus group data (Appendices 7, 8 and 9) by considering the effectiveness of the trainees' learning from experience, one of the main processes identified in Chapter 2 for developing professional judgement. The same basis of referencing is used for the illustrative quotes from the case studies and focus groups.

Learning from experience - effectiveness of current learning processes and activities

I have chosen Eraut's (2007) model of early career workplace learning (described at page 42) to provide the structure to achieve a detailed analysis of the data obtained from the case studies in relation to trainees ability to learn from their experience as it provides the structure to analyse the effectiveness of specific processes and activities and highlights the interconnected nature of them. As outlined in Chapter 2, this model groups these under three headings: (a) work processes where learning is a by-product, (b) learning activities located within work or learning processes and (c) learning processes at or near the workplace. Each is considered below in relation to data obtained from the case studies and focus groups.

An additional process of 'seat rotations' has been added as it does not fit within the existing categories of Eraut's model.

Heading (a) Work processes with learning as a by-product

1 Participation in group processes

All of the case study firms described that they involve trainees in team and department discussions. Firms 2, 3, 5 and 6 have regular in-house training sessions, focussing on changes in the law and developments in practice as well as weekly or monthly meetings to review new client business, current workloads and achievement of targets in relation to fees rendered, outlays due by clients and fees recovered.

The trainees described these are useful especially in relation to improving their understanding of the application of the law.

TP2 'we see this as a good opportunity to share knowledge and also for the person taking the seminar to develop skills, for example in giving presentations'.

2 Working alongside others

All of the Scottish Training Partners, HR Directors, supervisors and trainees spoke of the importance of having an open-plan environment with trainees working alongside more experienced people. This is described as the main process used to induct trainees and embed them into the way the department operates as well as allowing them to observe how more experienced people handle their workloads. This allows trainees to overhear senior people speaking to clients and other professionals on the phone as well as be directly involved in team discussions about problems and options. It also enables supervisors to observe how individual trainees deal with other people and priorities.

HRD3 'We deliberately put them out into the teams as we want them to be near someone quite senior as well as near someone to ask more routine questions'.

FGG 'You can hear people on telephone calls and the words they use to explain things to clients and the other side – it's really useful as you think 'I must remember that phrase''.

3 Consultation

Knowing when to consult with others is described by supervisors as an indication of the ability of the trainee to understand what he or she is asked to do and when further information or support is needed. All of the trainees described the importance of being able to raise an issue with more senior people when a problem or area of uncertainty arises.

S6 'With the trainees, we want them to learn to exercise independent thought at the same time as recognise when they need to come for help. We encourage them to come up with solutions and then check them out with us rather than expect to be told what to do. We sit close to them so we can hear what they are doing and they can hear us'.

4 Tackling challenging tasks and roles

The data obtained indicated that the ability to progress trainees' learning by providing challenging tasks and roles is inhibited by the requirement to demonstrate achievement of the required LO and seat rotations (see section 9 below). For example, all of the second trainees described that, even when they are near to completion of their two years, each new seat seemed to put them back to the way they felt on 'day one' again.

In their second year, trainees can apply to the LSS for a restricted practising certificate that allows them to appear in some courts. Firm 5 enabled their trainees to achieve the LO in relation to ‘advocacy’ by handling court appearances that related to the type of work they were familiar with undertaking. Firm 6 has introduced a ‘trainee rota’ for routine court work specifically to ensure that its trainees have early exposure to appearing in court as its supervisors explained that, in their experience, ‘standing on your own feet’ is the only way to develop advocacy skills and personal confidence.

Firms 2, 3, 4, 6 and 7 use secondment of trainees (see section 21 below) to offer them a chance to represent the firm by working in a placement in a client organisation ‘unsupervised’.

Firm 5 recognises the importance of providing challenging tasks and roles and keeps its trainees in the same department for all of the two year period so its supervisors can incrementally increase the level of responsibility given to them. In addition, its trainees assist at an external advice clinic for people who are carers so as to meet and engage with new clients without any direct supervision. The firm achieves the required ‘rotation’ for its trainees by allocating them litigation work in their second year based on court-related aspects of client work they have completed in the preceding year.

TP5 ‘In year 2 they go to court to do Guardianship hearings mainly so that they already know what the law is and should be familiar with the file. We run an external ‘carers’ clinic’ where people caring for people with capacity or health issues come in for free advice. I do it myself and you never know that legal advice you will be asked about (mostly Guardianship and Powers

of Attorney) and I get the trainees to do sessions as it is good for them to apply what they do in the office in an external environment that is much less 'certain'. We can monitor their conversion rate i.e. does the potential client become an actual client of the firm?'

T5 'Two years in one department means that I can develop more incrementally, can see my own development, am expected to take personal responsibility and allows people in the department to see that I can take increased responsibility and be responsible for my own clients. For example, when my supervisor went off on maternity leave, people seemed comfortable that I kept handling the work myself'.

TP10 'In relation to training the trainees, the style of each department is different – for example, in corporate we tend to use direct contact with a partner and shadowing and then if we can we manipulate the 3 areas of law requirement to keep trainees in that department as it takes time to train them up to generate fees and even from trainees there is a resistance to being sent to work in a department with the type of work they are not interested in qualifying into.... Yet conveyancing is very, very hands-on with clients and because of cost/business model in this department we have no qualified lawyers so the trainees do the same work as para-legals/legal executives. In family legal aid work, this is where people's judgement shines or otherwise'.

5 Problem solving

Problem solving is described by all of the interviewees as an integral part of the work of solicitors and mentioned it in the context of its importance

to the exercise of professional judgement and what clients expect of their legal advisors. However, all of the supervisors explained that, in their experience, trainees are unused to applying the law in a real life context which involves uncertainty of information, time pressure and dealing with a range of agendas.

S2 'Some of the trainees seem 'too young' – have no life experience so difficult for them to understand what is involved in solving 'messy problems'.

TP5 'They are thrown by 'uncertainty' so they need to learn how to make 'incomplete' judgement calls and prioritise what they decide to do. We want them to show that they can take the initiative and move things on to the next stage. They are too used to relying on styles rather than working out first of all what the problem is and then what we have to do. They also don't seem to appreciate that your professional reputation is at stake – if documents are sent back by the court as incomplete, if clients' details are wrong that is important! – it should mean something to them'.

6 Trying things out

All of the firms described that their trainees were part of their service delivery so they are set monthly targets in relation to hours billed to clients. All of the trainees however stated that this limits the time available for them to be allowed the time to 'try things out'. In addition, all of the supervisors commented that it is difficult to find the type of routine work that they used to undertake when they were trainees due to changes in the work practices of solicitors, for example in court procedures and land registration.

TP 1 'Changes to court processes and claims levels has resulted in less routine court work so difficult to teach them court craft at an early stage in the way that could do in the past'.

S6 'So far as we can, we want to give them real experience, for example, in relation to litigation skills, the Trainee Rota Scheme and particularly the asset recovery work allows us to offer a substantial case load of low risk work'.

7 Consolidating, extending and refining skills

The PQPRs are described by all of the Scottish firms as having limited effectiveness in relation to consolidating, extending and refining skills. This is mirrored by the comments made by Firms 8, 9 and 10. All of the interviews stated that the need to demonstrate the required LO placed the emphasis on achieving this rather than looking more holistically about how the trainee was improving, with illustrative comments from trainees that their supervisors 'pay lip service' to the process. The requirement to complete these every three months was described as being too often to be able to demonstrate any real progress as well as becoming repetitive and as a result, non-developmental. While the PEAT 2 processes require the completion of a 'reflective log', none of the trainees described finding this of any value. The matching six monthly reviews and 'weekly diary' process of the SRA were described similarly. In addition, the on-line completion of LSS processes by the trainee was described by supervisors as limiting the effectiveness of their review as when the trainees changes seat, the 'new' named supervisor does not have access to previously submitted forms. The HRD Directors in Firms 1, 3 and 8 explained that they try to provide a 'mentor/overview' role for the whole

of the two year period. However in Scotland they cannot access the PQPRs which limits their ability to offer continuity and consolidation.

Firms 2, 4, 5 and 6 use their own internal firm-wide appraisals processes, in addition to the PQPRs, to set their trainees team or department targets to encourage them to see themselves as part of the firm's longer term developmental processes. However, their trainees do not confirm this and see themselves as working to a two year time frame rather than a career plan.

T3 'The PEAT Learning Outcomes are both vague and overly prescriptive at the same time and difficult to evidence and demonstrate progression as they don't seem to fit what being asked to do – it may be more helpful to have them more intensive in the beginning when you need more feedback to help build your confidence and less so later on'.

S5 'I prefer to use the approach of asking 'give me an example of a difficulty you have had – how did you resolve it? When did you realise that you needed help? what did you do?' The PQPR is not that helpful as it doesn't seem to encourage that approach. We also complete the 6 monthly appraisal that we use with the staff with the trainees so as to set some goals and targets in the context of the firm's objectives. I feel I need to generate more of a 2-way discussion with the trainee than the quarterly review forms allow. The PEAT2 process does force people to review what they have done and what they have learned from it – allow them to reflect on what they are doing so as to track an improvement'.

T5 'I am supported here and can talk things through and do get feedback and comments – not judgemental, always constructive.

PEAT 2 quarterly reviews appear to be a 'tick box' exercise— I fill in the forms and then my supervisor signs them off – no oversight from the Law Society so can only assume we are completing them ok. It is difficult to show progression every 3 months'.

T5 'Regarding PEAT2, it is really difficult to fit things into the right box – overlapping and cumbersome at the same time as so fragmented that difficult to put it all together. The 60 hours requirement is good in that you are 'allowed the training time' plus the firm pays for the external provision. Perhaps the 'relevant legal knowledge section' should be more tied to what your job is? Perhaps there should be enhanced learning outcomes for year 2?'

8 Working with clients

All of the trainees spoke of the importance to their development of being given direct responsibility for their own clients and handling their own files through from beginning to end so as to be able to see the implications of their earlier decisions and/or a failure to obtain relevant information as well as gain confidence in their own judgement. However, depending on the type of work, all explained that some departments were more able to provide this than others. For example, lower risk private client work was more suitable to be delegated directly to trainees.

As a result of increasing specialisms and complexity of many of the departments in their firm, all of the Training Partners and HR Directors described that there were limited opportunities for their trainees to work directly with clients. For example, Firms 2, 3 and 5 were using law clinics, legal advice agencies or CAB evening sessions as a way of providing their trainees with exposure to 'real' clients. Firm 5 explained

that they assess how well their trainees perform in these ‘unsupervised session’ by measuring their conversion rates of these clinic client interviews to becoming clients of the firm.

HRD3 ‘Electronic communication is taking away direct client contact so not the same opportunity for trainees to attend client meetings which is the way that people traditionally learned’.

TP5 ‘As we do expose them to real clients, supervision is really important as we have to have an understanding of where each of them is – some are not confident enough, others too confident. They will make mistakes and will learn by doing. We get them to take face-to-face client meetings right from the outset and be personally responsible for that client and that file. We want them to take full ownership for their files and work out for themselves when they are out of their depth. When they come to ask for help, they need to learn to deal with the client problem rather than expect us ‘fix it for them’. We try to give them the tools to let them do that, so we provide positive reinforcement of what aspects they have handled well so as to give them the confidence to go back and deal with and respond to the client’.

T6 ‘Some seats give you more client exposure than others, for example, in Private Client you are given 30-40 files at a time, managing wills, Powers of Attorneys and executries and run them yourself – managing your own workload and feel like a lawyer with the client phoning you up and asking you questions and you have to give them replies so you better understand what you are doing’.

9 Additional process: Seat rotations

All of the Scottish firms (except 5) use seat rotations (normally six months) to expose their trainees to four areas of legal practice. Firm 6 and Firms 7, 8 and 9 (SRA requirement) use 8 month rotations. All of the trainees affected by this process described that it took them several weeks from staring in that seat to become familiar with that type of work and the way that that department operates which affected their ability to take direct responsibility for client work and build confidence in what they are doing. In all of the firms, there was no formal handover between seats either between the trainees or between the supervisors. This was restricting the trainee's feeling of progression as well as increasing the time it took the supervisors to 'get the trainee to speed' with the new area of work. An illustrative comment from the trainees was that they felt that they had six months experience four times rather than two years of incremental learning.

T1 'When move to new seat you feel like the new girl at school every time as you have to find someone to explain how things are done in this department as it is essential to have someone as a buffer between you and the partner'.

T3 'In relation to handover of seats you are left to sort it out yourselves'.

TP10 'the start of each of their seats we set them technical and client facing objectives plus personal development ones as well. We get them to do dummy work on a file initially and give them feedback on how they have done – compare and contrast their answer with what an experienced person says. By the last seat, they will have direct exposure to clients. We are a full service

firm and we expect them to contribute from day one. We don't want them to live in the silo of that type of work/department – we want them to see the wider picture and be able to transfer learning across as 'judgement involved factors from a number of different disciplines'.

The pressure to specialise early was raised by interviewees. For example, the HR Director in Firm 8 felt that the three areas of law rotation required by the SRA are out-of-date as everyone is becoming more specialised – *'they've already specialised through their degree and choice of electives on LPC'*.

<u>Heading (b) Learning activities located within work or learning processes</u>

10 Asking questions

All of the Scottish supervisors described the importance of encouraging trainees to ask questions and the importance that they place on using open-plan working to allow them to be available to their staff. All of the Scottish trainees explained that working alongside others in such a setting meant that they could ask questions of more senior colleagues as the need arose. All of the trainees explained that it was important to learn to ask questions of the 'right' people, explaining that support staff are a good source of answers to basic and routine questions as more senior people are often very busy.

T6 'Always able to ask questions and encouraged to ask questions although work pressures do affect how much time people have to spare for you'.

T8 'Things do crop up and I try to think about the issues myself first of all then discuss with someone and then try to decide. It is important to be able to speak to other people and this is easy to do as I share an office with an Associate who is helpful – perhaps not necessary the same across the whole firm'.

11 Getting information

All of the supervisors described that they wanted their trainees to become proactive at obtaining information from colleagues, clients, other law firms, government bodies and external professionals. They explained that, because they sat closely beside them, they could assess their progression by overhearing how each trainee went about this as well as check draft letters and complicated emails.

S3 'I want to see them developing initiative and some judgement of what is ok to do so I can then give them more direct contact so that they learn to stand on their own two feet'.

12 Locating resource people

All of the trainees described locating people who could help them as an important part of their learning, explaining that some more experienced people 'may be very good at what they do but are not that approachable'. They emphasised that being able to find someone willing to take the time to explain things properly was essential.

T4 'You always feel that you can get help if you need it and you quickly learn who to go to when you have a real problem although you know that you are constantly being assessed which I found difficult at first'.

13 Listening and observing

In addition to the comments made about in relation to open-plan working which provided a constant source of being able to listen and observe, all of the trainees described the importance of being taken along to meetings, particularly with advocates and being asked to take notes.

Where they had had the opportunity to work with their firm on summer placements prior to starting their training contract, trainees described that they had had more opportunity to do that as their time is now expected to be charged to clients.

T4 'You are encouraged to take some steps yourselves - experience develops most naturally through exposure – being able to observe, then build, build and build more'.

14 Reflecting

Both the LSS and SRA processes include a requirement to complete a reflective log yet all of the trainees do not describe them as useful. All of the Scottish trainees explained that they completed the on-line log due to 'compliance' rather than to improve recognition of their learning. The English process of weekly diary entries was also described as of limited value.

T7 'Log activity – it is easier just to keep a folder and put things in it to go back and refer to'.

HRD8 'I encourage them to use their weekly Training diary – get them to think about 'I got that right' and/or 'I found that difficult, so what will I do differently next time?' The reflective diary is good if they have someone like me chasing them – I encourage them to use a lot at the beginning so as to build their confidence

but it does become more difficult later on to write something new. It is useful to focus on where intensive learning taking place (at the end or beginning of a new seat for example)'.

15 Learning from mistakes

When asked to explain how they developed their own professional judgement, senior people stated that they learned a lot from making mistakes and moving out of their comfort zone. All of the supervisors described how they wanted their trainees to take decisions but at the same time, spoke about the emphasis the firm placed on the management of risk and the exposure that making a mistake caused the firm. None of the trainees offered examples of learning from mistakes.

TP2 'Your questions prompted me to look back on how I had developed my own judgement – it was not always an easy route – in the early years, I learned more from mistakes and even now these still 'get to me'. I have learned through experience that my judgement is often right but I still set great store by being able to seek the views of others. In my experience this can help, sometimes by confirming my own view and sometimes by providing a fresh perspective'.

S3 'I want them to make decisions even if they get it wrong, provided they go about it the right way'.

16 Giving and receiving feedback

All of the firms described the importance of providing constant feedback to their trainees and all of the trainees confirmed that this is an integral part of their learning. In particular, the supervisors described using the process of preparing draft letters and documents to allow written and

verbal commentary as well as examples of the standard expected of a trainee.

While all of the Training Partners and HR Directors advised that the quality and consistency of such feedback is dependent on the skills and time pressures of the supervisors, they did not offer any formal training in the role of supervisor. All of the trainees described that some supervisors were good at providing positive isolated commentary, others less so and that because of the seat rotations, there was no consistency between supervisors.

TP 2 'a great deal of the effectiveness depends on the line manager as there are those who only pay lip service to the programme and regard it as a form filling exercise, rather than as an opportunity to develop those they supervise'.

HR6 'Some of our mentors are naturally better than others – they tend to be nominated by the department heads so I will give them one-to-one coaching if I feel they are needing help in understanding their role'.

S6 'It is important that they are aware of what we want them to achieve and what is expected of them. What makes a good trainee is that they can adapt to their seat even if it is an area that they don't want to work in and be consistently good and have a good attitude'.

T6 'You are given feedback on how you are doing and we do have good supervisors so does boost your confidence'.

17 Use of mediating artefacts

All of the trainees described that the main methods of ‘getting up to speed’ with a new seat was by reading client files as well as any handover notes that may have been prepared by the previous trainee in the seat. All of the firms use ‘style’ documents which provide templates for completion and trainees learn how to source and use them when drafting.

T6 ‘I learn from examples by finding a previous file, reading it and seeing how it all fits in and what need to do’.

Heading (c) Learning processes at or near the workplace

18 Being supervised

All of the firms follow the required LSS and SRA processes with their trainees assigned a supervisor in relation to each of their seats. All of the supervisors were clear about their role in relation to the allocation and management of the trainee’s workloads and spoke in particular of the need to make an assessment at the beginning of the seat of what each trainee was capable of. A typical way that they achieved this was to give trainees a simple piece of legal research to complete to find out how well they handled it so as to determine what skills need to be improved on and how much direct responsibility could be given.

All of the trainees confirmed this process, describing that they were placed close to their supervisor who could observe and overhear how they handled their work.

S1 'I want to be seen as approachable so encourage them to come and ask me when they need help but want them to come with a suggested solution rather than expect me to tell them what to do, although sometimes it is difficult to find the time when you are busy'.

S2 'sometimes difficult to balance between being accessible and getting on with your own work – perhaps easier when out of the office at court to talk to them informally about what planning to and what just happened, yet not so easy to give them practice as not yet able to appear in court. Private client easier to let them have their own files, clients and responsibility – some very hesitant, some overconfident and casual'.

S10 'I try to get them to get used to asking 'what if' questions – I like to take them to tribunal hearings so they can see what happens there and talk to them in the car on the way there and back – about client expectations, what are manageable, what are reasonable. I also get them to speak to clients who I know are happy to spend time explaining what they expect from their legal advisors and what they value, to let them understand what makes good client service. As I said we see them every day so we can see where they need more help and more practice, for instance in drafting and this gives us something to talk specifically about how we want to see them improve and something 'real' for them to be doing'.

[Being coached Note: 'Coaching' is not differentiated from supervision or mentoring and as a result references to it are included in those sections.]

19 Being mentored

As mentioned under section 12, trainees described the importance of finding people, other than their assigned supervisor, who were good at providing help and support as this allowed them to rehearse and talk through problems before they spoke more formally to senior people. Firm 2 offers a formal mentoring process and Firm 10 provides a formal ‘buddy system’.

TP10 ‘We also ‘buddy them up with second years’ to help them get answers to routine questions’.

20 Shadowing

Shadowing was described by all of the trainees as an important part of their learning, yet they felt that they were not ‘allowed’ the time to do it. Those that had summer placements experience described this process as an important part of their learning about how ‘things were done’. Because they are now expected to log chargeable hours, they described that they could only go along with more senior people to court or attend client meetings or consultations with counsel if they are able to perform an actual task, such as ‘taking notes’.

T3 ‘More chance to shadow and sit in on meetings, court hearing and tribunals ... on summer placements than do as trainees where the emphasis now is on the need to be ‘chargeable’.

FGG ‘It would really have helped me to have shadowed people appearing in court a lot more before I had to do it – some Sheriffs seem to enjoy tearing people to bits so it would have helped to have seen how other people actually coped with that’.

21 Visiting other sites

Where firms have more than one office, they rotate their trainees across them. In addition, Firms 2, 3, 4, 6 and 7 second their trainees to client organisations for a period of up to six months. They explained that they did this to support the client relationship rather than using it as process to increase the trainee's learning. The trainees who had experience of secondment described it as a valuable process as it widened their understanding of commercial awareness and how other solicitors worked.

T3 'Secondment develops different aspects of professional judgement for example commercial awareness and being quicker to the point'.

T6 'A great experience to see how large organisations operate and really helped my understanding of their business and risks'.

22 Conferences

The achievement of the 60 hours formal training meant that all of the trainees had limited exposure to attendance at external conferences. When they did so, it was described as an opportunity to network on behalf of the firm rather than a learning opportunity.

23 Short courses

The LSS requires completion of mandatory accredited TCPD training. Firms 1, 2, 3, 4 and 6 have obtained such accreditation for their in-house training programme, with Firms 5 and 7 using external providers.

24 Working for a qualification

All of the trainees are working for a qualification, namely to be admitted as a solicitor. All of the interviewees commented on the limitations of the required processes.

25 Independent study

All of the trainees and qualified solicitors are required to complete independent study.

Summary

Figure 6 summarises the foregoing analysis with the work processes and leaning activities and processes mapped in columns 1, 3 and 5 and the additional process created by the LSS and SRA requirements shown in bold and underlined. The findings from the case studies are shown in columns 2, 4 and 6. Those marked with * are described by trainees as important in relation to their learning. Those in italics indicate aspects that are not working effectively as a result, appear to limit their early career learning. Some of this is caused by the formal requirements of the admitting bodies. For example, the requirement for seat rotation is inhibiting the allocation of more challenging tasks and roles and significant progression from first to second year because each rotation requires them to be given ‘beginner’s tasks’ as they settle into the way of working of the new department.

Firm 5 keeps its trainees in the one department for the full two years so is able to achieve incremental progression of responsibility. In addition, its recruitment process involves either selecting people who have worked as para-legals or having its future trainees work part-time with it during

their DPLP. This effectively extends their ‘experience of practice’ prior to admission as well as allowing the firm to have an understanding of their level of ability from the start of their training contract.

The formal reviews are described as repetitive and completed to comply rather than to ‘consolidate, extend and refine skills’ and the PEAT 2 on-line reflective logs and the SRA diary are not perceived as enabling reflection. Exposing trainees to client facing work is described by senior people as an essential part of the development of their judgement yet, in practice, the driver behind this is to have trainees producing chargeable fees rather than as a learning process. The amount of exposure to clients varies between departments with the result that trainees may have little direct dealings with them or be offered ad hoc situations such as evening work with CAB clients. In addition, the firms that use secondments do so to build their relationship with that client rather than use it as a learning process. Given the pressures on more senior people’s time and the inconsistency of supervisors interpretation of their supportive role, trainees see one of the main building blocks in facilitating their learning is being able to find the ‘right person’ to get help from. Another process they describe of value is being allowed to shadow senior people (without having to charge their time to a particular client matter).

Figure 6: Eraut (2007: 409) topology of early career learning

Work processes with learning as a by-product	Case study firms	Learning activities located within work or learning processes	Case study firms	Learning processes at or near the workplace	Case study firms
1 Participation in group processes	all	10 Asking questions	all	18 Being supervised	Required process
2 Working alongside others	all	11 Getting information	all	Being coached	Seen as part of mentoring
3 Consultation	all	12 Locating resource people *	all	19 Being mentored *	all
4 Tackling challenging tasks and roles	<i>Limited by seat rotation</i>	13 Listening and observing	all	20 Shadowing *	<i>Trainees want opportunity to do this</i>
5 Problem solving	all	14 Reflecting	<i>Required processes not enabling this</i>	21 Visiting other sites	Secondments to clients used by some firms
6 Trying things out	all	15 Learning from mistakes	all	22 Conferences	Not used for learning (seen as networking)
7 Consolidating, extending and refining skills	<i>Required processes not enabling this</i>	16 Giving and receiving feedback	all	23 Short courses	Required process

8 Working with clients	<i>Limited by the type of work</i>	17 Use of mediating artefacts *	all	24 Working for a qualification	Required process
<u>9 Seat rotations</u>	all			25 Independent study	Included in TCPD training programme

* = described by trainees as important in relation to their learning

Italics = indicate aspects that are not working effectively

Overall summary of Chapters 5 and 6

The analysis undertaken in Chapters 5 and 6 confirm, as proposed in Chapter 2, that the novice learns and progresses under the direct observation of an aspirational role model (Raelin 2008, Beckett and Hager 2000) who provides feedback, exemplifies and motivates (Svensson 1990) as well as demonstrates how choices are made. This progression is illustrative of Lave and Wenger's (1991) model of legitimate peripheral participation where learning occurs through the process of transition from new entrant to full engagement and complexity.

There are a number of gaps in the current processes used by the UK legal profession in the development of professional judgement. When asked to describe how they had developed it themselves, experienced practitioners confirm Beckett and Hager's (2000: 304) 'whole lived experiences' and speak of the importance of:

- being able to observe a master in action,

- having a more senior person who is prepared to take the time to explain options,
- learning through being given direct responsibility,
- being immersed in a piece of work,
- being allocated work that stretches current ability, and
- building personal confidence and recognition of individual contribution.

Yet despite this, in many cases, supervisors are not providing such experiences for their trainees. In addition, the LSS and SRA processes that requires that trainees demonstrate achievement of the required LO are not working effectively as their repetitive nature and the frequency of the formal reviews are not perceived as enabling progression. This is resulting in ‘tokenism’ in relation to completion of these processes by both supervisors and trainees.

The emphasis on expecting trainees to be part of the firm’s service delivery offers the potential for significant learning. However, the erosion of direct client contact through the use of emails and the reduction of work with low levels of risk results in limited opportunities to assign trainees direct responsibility for client work. In addition, the process of rotating to a new department every six months makes it difficult for trainees to see the effects of any judgements they do make as well as embed their experiential learning.

Chapter 7 Findings, Recommendations, Dissemination and Further Research

Introduction

This chapter returns to the research questions specified on page 14 and provides a definition of professional judgement based on both theory and practice. It also reviews the effectiveness of the PEAT 2 processes in relation to the development of professional judgement. It draws together the interpretations and analysis contained in Chapters 2, 3, 5 and 6 to determine Findings in relation to the stated objective of this research as well as the wider contexts of professional judgement and work-based learning. Based upon these Findings, I consider the implications for the development of professional legal judgement and offer Recommendations for changes to the current Scottish pre-admission legal training processes and the introduction of a new specialist accreditation model for Scottish solicitors. Finally, I describe the dissemination of the results of this research as well as areas that merit further investigation.

Section 1 Findings for PEAT 2

The research conducted for this thesis reveals a pattern of the professional development in which the master-apprentice model is evident, albeit in largely restricted form. However, given the concerns expressed in Chapter 3 and by practitioners in respect of the diminishing prospects for this model, the core of this thesis is concerned with the way in which the professional body attempts to foster the development of young professionals through the current structure of PEAT2. This section therefore considers the findings relating to the effectiveness of

the PEAT 2 processes in the context of the development of professional judgement of trainees as well as the influence of recent regulatory and market changes on trainees' work-based learning.

The primary audiences for these are the LSS and Scottish employer firms and trainees. Secondary ones include legal vocational teachers.

(a) No overt mention of the ability to exercise professional judgement means that its development is not supported nor assessed

Although, the exercise of professional judgement is considered by both professional bodies and practitioners to be an essential part of the role of solicitors, there are no LO relating to it with the result that its formal development is neither supported nor assessed. In addition, in the absence of a description of its component elements, there is limited recognition by the trainees of their gaining competence in it.

(b) PEAT 2 processes are inhibiting the experiential learning of trainees

The research indicates that the PEAT 2 processes are inhibiting the experiential learning (one of the components of developing judgement) of the trainees because:

1. the LO are not incremental with the result that they become repetitive rather than developmental,
2. seat rotations (usually 4) with a new supervisor at each change suggests that trainees experience six months of learning being repeated four times rather than two years of incremental learning,
3. the short duration of the seat rotations makes it difficult for trainees to be given responsibility for completing a client file from

- start to finish, limiting their ability to reflect on the effect of their earlier acts, omissions and decisions,
4. the on-line password protected submission process of the PQPRs does not allow supervisors to review the trainee's previous completed forms and this limits their ability to offer incremental development and support,
 5. the requirement to hold PQPRs quarterly makes it difficult for trainees to demonstrate their progression against the LO in relation to each period, and
 6. the reflective diary is not described by trainees as relevant or useful with the result that there is limited recognition of reflection, incremental development and transferable skills.

Firms that retain their trainees in one department with the same supervisor for two years achieve their phased development as they can be given direct responsibility for client files through to completion. This enables supervisors to provide consistent feedback and structured support. This in turn develops trainee confidence with the result that they can be given increased complexity and client-facing, fee generating workloads.

(c) Increasing specialism at variance with experiential learning

While the SRA requires exposure to three areas of practice, the LSS does not formally require 'seat rotations'. Most firms, however, do rotate their trainees through specialised departments. This results in short-term, narrow and limited exposure to specialist areas of practice making it difficult for trainees to build experience of context as 'observation can be useful but only as a prelude to active engagement' (Wenger 1998: 100).

(d) Increasing commoditisation of routine, low risk work makes it difficult to give trainees direct responsibility for client facing work

The increased use of software to complete routine, low risk work and changes to court processes, company and property registration means that there is less opportunity than existed previously to allocate trainees direct responsibility for client work. To supplement this, firms ask trainees to volunteer for law clinics, legal advice centres and CAB sessions but, given that many work in firms whose clients are large commercial organisations, it is difficult for trainees to transfer their learning from that context into their everyday practice. Overall, this is restricting the development of trainees' confidence in dealing with clients.

(e) Increasing commercial pressures on law firms limits the amount of time available for observation and reflection

The research illustrates the increasing 'commercialisation' of law firms (Boon 2010, Faulconbridge and Muzio 2010) with the description by Training Partners that their trainees are recruited to be part of their service delivery and expected to charge their time to clients. This results in limited opportunity for explicit observation of more senior people and little recognition of the importance of being encouraged to reflect on what has been learned from shadowing them. The use of secondments to client organisations offers the potential to allow trainees to observe in-house solicitors manage ethical tensions between their employers and professional regulations, as well as exercise their commercial judgement and manage risk. However, firms use these secondments to strengthen

their relationship with that client rather than as a developmental opportunity for the trainee with the result there is no method to capture the learning achieved or measure and demonstrate improvements in performance.

(f) Importance of trainees developing personal confidence and having the motivation to learn and develop

Supervisors described that trainees seem to them to lack the ability to tackle ‘real life’ problems and are uncomfortable with the ‘uncertainty’ of professional practice (Schon 1987) by ‘balancing what is known and to be able to anticipate what is not yet known’ (Styhre 2013: 16). This may result in hesitation which inhibits their capacity to learn and develop the interpersonal skills of ‘confidence, motivation and judgement’ (Maughan and Webb 2006: 120).

Section 2 Findings in relation to professional legal judgement

This section offers findings in professional legal judgement and how it is defined, is exercised and developed.

The primary audience for these is the LSS, Scottish employer firms and trainees and legal vocational teachers. Secondary ones include vocational teachers in other disciplines and employers of graduates.

(a) A definition of ‘professional legal judgement’

The analysis illustrates that the exercise of professional judgement requires the ability to apply discipline specific-knowledge to the context of the particular client situation so as to form a judgement that can be

exercised within the parameters of accepted practice that includes adherence to an ethical code of conduct. This allows it to be both acceptable to the client at the same time as defensible in relation to any subsequent complaint against the resultant effect of the decision. Combining this with the working definitions of professional judgement and professional legal judgement offered in Chapter 2 and the findings of Chapters 5, a suggested definition of professional legal judgement is therefore:

‘a learned ability to interpret and apply the relevant knowledge of the law and current established practice that includes adherence to the relevant professional code of conduct in the context of each client situation so as to implement the most appropriate choice’.

(b) The process of how it is exercised and the skills involved

This definition illustrates the process by which legal professionals exercise their judgement. Brest and Hamilton Krieger’s (2010) model suggests that this includes problem framing and solving, generating and interpreting alternatives, recognition of bias and risk and decision making. Parallels can be drawn with Mezirow and Associates (1990: 7) description of task-orientated problem solving described as ‘instrumental learning’ that looks reflectively at relevant content and assumptions to:

‘reassess the efficacy of the strategies and tactics used... check on whether we have identified all of the relevant options for action, correctly assesses the consequences of alternative hunches or hypotheses, controlled the right variables, used the best methods of problem solving....made inferences warranted from the

evidence and as free from bias as possible, generalized from a dependably representative sample and correctly interpreted the feedback on actions taken’.

(c) A process that enables its development

As it has been determined that the development of professional judgement requires supported exposure to practice, this suggests that the main emphasis of this support should lie in the pre-admission training period (PEAT 2). However, where these skills are included in undergraduate (such as legal research and analysis) and vocational (such as interviewing and negotiating) LO, they can be emphasised to students as providing them with some of the components that will allow them to exercise professional judgement once they enter practice.

Section 3 Findings in relation to future roles for UK solicitors

The data obtained from individual practitioners, the UK professional bodies and regulators is consistent with the interpretation of the external pressures influencing the way the UK legal services market operates considered in Chapter 3 and that, in the future, the solicitors’ profession will reflect continued fragmentation and specialisation with the introduction of the proposed new roles of ‘expert specialist’, ‘manager’, ‘chief executive’ and ‘in-house lawyer’.

This suggests that to support trainees to respond to these developments, it will be necessary to focus on their achieving work experience that enables them to specialise once they are formally admitted. This should include exposure to the application of complex and constantly changing

legislation and case law as well as skills in assessing and managing risk, project management and leadership.

Section 4 Findings in relation to professional and work-based learning and professional judgement

This section offers findings in relation to professional and work-based learning in general and professional judgement in particular. These have an extended audience beyond that of the legal profession.

(a) The importance of being able to learn from experience and use reflection in relation to the development of professional judgement

The research emphasises the importance of developing the ability to learn from experience (Mezirow 1991) so as to be able to make linkages between contexts when formulating choices and taking decisions (Blasi 1995). As described above, the seat rotations are limiting trainees' ability to achieve this. In addition, it applies and extends the processes and activities described in Eraut's (2007) model of early career learning with the additions of secondments and formal regular reviews between novices and their supervisors.

The research reinforces the importance of the use of reflection (Kolb 1984, Boud and Walker 1993, Bolton 2010) to allow practitioners to cope with and improve their practice through recognising learning as it occurs in their daily work and making resultant changes. Supervisors spoke of learning from making mistakes, and of only recognising this with the benefit of hindsight, confirming Raelin (2008: 70) that

‘experience solidifies learning made tacit by experimentation (and) leads to mastery more quickly when subjected to reflection’.

(b) The importance of social learning theories in relation to the personal development of professionals

This research illustrates Wenger’s (1998: 101) theory of ‘communities of practice’ in relation to the effective working of the professions and individual professionals where ‘in order to be on an inbound trajectory newcomers must be granted enough legitimacy to be treated as potential members’. In particular, it emphasises the importance of ‘social learning’ (Wenger 2009: 211) for professional disciplines and the relevance of its interconnected elements described in Chapter 2 with interviewees speaking of the value derived from:

- a) observing senior people and modelling themselves on them (Identity - learning as becoming),
- b) being given direct responsibility for a client file from beginning to end (Practice - learning as doing),
- c) being given increasing levels of responsibility (Meaning - learning as experience), and
- d) being regarded as being worth investing time in by senior people and included in discussions of client problems, options and solutions (Community - learning as belonging).

It also illustrates Eraut’s model (2012) with its emphasis on learning factors that include (a) the challenge and value of the work, (b) feedback and support and (c) confidence and commitment and personal agency, and context factors of (a) the allocation and structuring of work, (b)

encounters and relationships with people at work and (c) individual participation and expectations of their performance and progress.

Interviews described the importance of the ‘zone of proximal development’ (Vygotsky 1978) where incremental responsibility is given, the ‘scaffolding of support’ (Raelin 1998) and the three elements of Wenger’s (1998) ‘community of practice’ that combines the ‘mutual engagement, joint enterprise and shared repertoire’ involved in completing client work. The interviews also illustrated the influence of the first exposure to practice in relation to the formation of identity (Faulconbridge and Muzio 2010) with firms describing that they want their trainees to learn to do it ‘their way’.

(c) The importance of legitimate participation model in relation to managing complexity and uncertainty, developing confidence and responding to current and future work role demands

The firms’ explanation of the induction they gave trainees into how ‘we do things here’ illustrates the legitimate participation model of Lave and Wenger’s (1991: 23) where learning occurs through the process of transition from new entrant to full engagement and complexity, with the apprentice ‘simultaneously performing in several roles’ with different expectations and responsibilities as described in Chapter 2. Trainees were assigned the role of ‘status subordinate’, there was recognition that they were ‘learning practitioners’, and there were examples where they became the ‘sole responsible agent in minor parts of the performance’.

Trainees described the importance of developing confidence in their own ability and senior people spoke of the need to be confident of the trainee’s ability to handle client work well. Both of this underpinned the

two aspects of professional role confidence : (1) expert confidence that is ‘confidence of one’s ability to wield the competencies and skills required to practice the profession’ and (2) career-fit confidence that is ‘confidence that a profession’s career path is consonant with one’s individual interests and values’ (Styhre 2013: 84). These two elements enable professionals to handle higher risk, more complex work and are a necessary part of solicitors’ ability to cope with their current and projected future roles.

In addition, the research illustrates that professionals work in the indeterminate zones of complexity, uncertainty and subjectivity described by Schein (1972) and Schon (1987) with supervisors commenting that trainees do not seem comfortable with this having had limited exposure to it prior to entering practice.

(d) The importance of the master-apprenticeship model in relation to the development of professional judgement

The research illustrates the importance of the master-apprenticeship model in relation to the development of professional judgement. In addition, it supports the accuracy and importance of Fuller and Unwin’s (2003) model by extending its application to professional apprenticeships. Using this model as a basis for analysis enables the recognition of the restrictive nature of aspects of the pre-admission UK legal training and that its expansive elements are included to meet the formal requirements of the external admitting body rather than as an inherent part of employer firms’ learning culture and support. It illustrates the importance of being trained beyond the immediate job and of exposure to external influences, such as through the use of secondments. In addition, this research expands the application of the

model by demonstrating that it enables professional judgement to be developed confirming Sullivan et al. (2007: 173) that ‘(p)ractical judgment depends on complex traditions of being which can only come alive through apprenticeship experiences with exemplars of inherited judgment and skill’.

(e) The exercise of professional judgment is the core of professional practice and is holistic and contextual

The research illustrates that the exercise of professional judgement is at the ‘core of professional practice’ (Fish and Coles 1998) with senior practitioners describing it as ‘what clients expect of their professional advisors’. It also supports Beckett and Hager’s (2002: 185) model that argues that professional judgement is holistic in that it combines the relevant knowledge and contextual facts and adjusts as practice develops as it is used to solve specific ‘real life’ problems that are ambiguous and time pressured.

It emphasises the value of using the supportive activities and processes of Eraut’s (2007) model of early career learning as expanded in Chapter 6 to include the LSS and SRA processes. It affirms the views of Sullivan et al. (2007) of the limitations on seeking to ‘teach’ it in formal education without exposing students to actual practice, for example, through working in law clinics, legal advice agencies and the CAB.

It illustrates that judgement is at the core of professional practice and its development therefore requires to be made overt and facilitated. This process includes enabling novices to:

1. complete client work under the direct supervision of more experienced practitioners who set performance standards and provide them with incremental support and constructive feedback,
2. manage the uncertainty of practice and apply what they observe and learn from one situation into another one so as to resolve the problems of their clients,
3. build personal confidence in their own judgement as well as career confidence that they ‘fit into their community’, and
4. as a result, practice successfully and progress to mastery.

Section 5 Recommendations

This section makes specific recommendations in relation to the current content of the education and training of Scottish solicitors that address the findings of this research.

(a) Adjustments to Foundation Degree

Given that the core role of a lawyer is to be a ‘problem solver’ (Aaronson 1998), there should be more emphasis on problem solving in relation to the LO in the undergraduate degree. Students should be asked to develop this skill by completion of practical exercises across the whole curriculum.

(b) Adjustments to PEAT 1

The emphasis on problem solving should be continued into the PEAT I LO. In addition, ‘developing the ability to exercise professional judgement’ and ‘becoming a reflective practitioner’ should be added to them (as well as into PEAT 2 LO as mentioned in section (c) below).

In order to provide them with experience of practice, it is suggested that each DPLP student should complete at least one work-based learning course in a law clinic, law firm or CAB, with the summative assessment for this course based on a Reflective Portfolio (RP) that includes evidence of achievement of the adjusted LO from the employer and a sample of clients.

This addresses Sullivan et al.'s (2007: 173) point that 'the essential goal of professional schools must be to form practitioners who are aware of what it takes to become competent in their chosen domain and to equip them with the reflective capacity and motivation to pursue genuine expertise'.

(c) Adjustments to PEAT 2

This RP should continue to be developed by the trainee during PEAT 2 and include all formal review documents and supporting evidence. It should be available to the employing Training Partners and supervisors to allow them to ascertain what each trainee has already achieved and had experience of. This would facilitate the firm's ability to allocate work to the trainee at the most appropriate developmental level.

In addition, trainees should have a mentor assigned to them by their employer for the full two year period to help recognise and embed their learning from each of the seat rotations as well as provide support with more general career development. The trainee and mentor should meet regularly thereby allowing the PQPRs with the supervisors to be less frequent and more relevant to work-based performance.

Specific changes to be made to the PEAT 2 processes should therefore include that:

1. trainees are assigned a mentor by their employer for the full two years of their training,
2. trainees maintain the RP developed during their DPLP to (a) allow them demonstrate progressive achievement of their PEAT 2 LO by including review documents and supporting evidence and (b) enable them to recognise their experiential learning,
3. Training Partners, supervisors and mentors have access to the RP to allow them to establish each trainee's existing experience, skills and level of performance to enable them to assign work at the right level of responsibility, particularly in relation to induction and seat changes,
4. 'developing the ability to exercise professional judgement' and 'to become a reflective practitioner' is added to the LO,
5. the LO are set at two levels: core ones for the first year and more advanced for the second, and include more emphasis on the demonstration of having direct client responsibility,
6. an additional internal review document (based on reflective questions) is introduced into the PQPR process with trainees completing and submitting it in advance of the review meeting with their supervisors, discussed, adjusted and agreed, with copies kept by the supervisors and trainees and made available to the Training Partner/HR Director and mentor,
7. the frequency of the PQPRs with the supervisors is changed to months 3, 9, 15 and 21 of the training contract with an emphasis on trainee performance,

8. a new process of review meetings with the mentor, supported by a pre-meeting reflective form completed by the trainee, is introduced in months 1, 6 and 18 to assess the trainee's general progress, discuss seat rotations and career choices and agree specific development actions,
9. during the initial 4 months of the traineeship, trainees undertake a shadowing exercise of a senior practitioner, prepare a report of what they have observed and learned during it and send this to the mentor for discussion during the 6 month review meeting,
10. firms are encouraged to review the frequency of their seat rotations and consider how to improve the integration of their trainees' learning, for example by identifying and emphasising elements of solicitors' practice that are common to all specialisms, such as research and drafting,
11. firms are required to provide training to their supervisors in relation to this role, and
12. template forms are introduced for completion prior to, during and after secondments to include a description of what the trainee and firm are seeking to achieve, what improvements are being sought and what evidence of achievement is required.

(d) New specialist qualifications

The analysis in Chapters 5 and 6 confirms the increasing pressure to specialise identified in Chapter 3. I propose that a new specialist qualification for Scottish solicitors should be introduced that identifies the requisite knowledge and skills of each type of specialism and

provides a structure that supports and recognises performance and achievement.

Given the complexities of assessing this type of learning, I suggest that the LSS should be the accrediting body. The award should include technical specialisms, such as employment, banking or family law and a management qualification that covers the skills required to manage and lead a complex, high-risk legal services business including systemisation of legal processes and project management.

Section 6 Dissemination of the Findings and Recommendations

This section describes the disseminations of these Findings and Recommendations and the responses to them.

1. LSS

I sent a summary of my Findings and Recommendations to the LSS's Director of Training in February 2015 and met with her to discuss them. She advised that my results were timely as their Education and Training Committee was considering whether to carry out a review of the PEAT 2 processes and asked me to present my Findings for discussion at their April 2015 committee meeting. The solicitor members of the committee commented that my findings confirmed their own experiences of the PEAT 2 processes. The lay members stated that, in the wider context of the continued importance of the exercise of judgement, my findings mirrored their concerns about the implications of the current changes in the work of solicitors and the importance of ensuring that admitted solicitors have the knowledge, skills and

abilities to perform what will be required of them in the future. The Chair asked that I send them my detailed Findings and Recommendations after completion of my thesis for further discussion with them.

2. SRA

I contacted the SRA in February 2015 in relation to their consultation (SRA 2014b) and their new competency heading of ‘judgement’. This resulted in a request from them for a summary of my Findings and a telephone discussion the same month which was described by them as ‘very helpful’, especially my comments about the absence of an established definition of ‘judgement’.

3. Case Study firms

I sent a summary of my Findings and the relevant Recommendations to each of the case study firms in March 2015 and five asked me to meet with them to discuss these in more detail. They advised that they had found the whole process useful as they have already implemented suggestions from my feedback report to them and would now consider implementing elements of my final results. They also asked that I feedback my Findings in relation to the effectiveness of the PEAT 2 processes to the LSS.

4. Legal Educators

I submitted a Paper on my research for discussion at the Association of Law Teachers Conference in March 2015. Around 30 people attended my session and expressed interest in my results. In particular, it was stated by the chair of the session that placing an emphasis on ‘professional judgement’ rather than

‘professionalism’ made an important contribution to the development of novice lawyers. I intend to offer an article to their journal, *The Law Teacher* after completion of my thesis.

Section 7 Areas for further research

The preceding Recommendations indicate a number of areas that merit further research:

- (a) The research concentrates on ‘large law firms’ in Scotland. However, the extent to which professional judgement is developed by trainees in the smaller law firms should be investigated.
- (b) The case study firms set their trainees targets for logging hours that can be charged to clients. These time-recording systems assign codes to specific activities, such as legal research, drafting, meeting with clients and telephone calls. If firms are willing to use this data to provide summaries of what their trainees spend their time on, these could be compared to the PEAT 2 LO to determine what employers expect their trainees to be able to do in their first and second years. This would allow adjustments to be made to the LO and assigned to respective years so as to be more relevant to their work-based practice.
- (c) With regard to Recommendation 5 (d), research should be undertaken to investigate existing models in the legal and other professions to help develop more detailed proposals.

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Appendix 1 Law Society of Scotland PEAT 1 and 2 processes

Details of the Law Society of Scotland's requirements for its Post Education and Training stages (PEAT 1 and 2) are contained at <https://www.lawscot.org.uk/media/295689/peat-1-guidelines.pdf> and <https://www.lawscot.org.uk/media/225803/peat%20%20outcomes.pdf> respectively. In addition, trainees are provided with detailed information about the processes involved at <https://www.lawscot.org.uk/education-and-careers/the-traineeship/during-your-traineeship/the-peat-2-outcomes/>, Details of requirements and templates are provided for employers at <https://www.lawscot.org.uk/media/225803/peat%20%20outcomes.pdf>.

The following excerpts from the above sources and summaries are relevant to this research:-

'PEAT comprises PEAT 1 (the vocational stage; formerly the Diploma in Legal Practice and now the Diploma in Professional Legal Practice) and PEAT 2 (the workbased stage; the traineeship). PEAT should be regarded as the whole, with PEAT 1 and PEAT 2 forming two components of that whole. PEAT will facilitate the development of legal skills and will integrate these with legal knowledge and ethical behaviours.

PEAT 1 is the stage of legal education where knowledge, skills, attitudes and values are learned in a simulated environment. PEAT 2 is the stage of legal education where the knowledge, skills, attitudes and values are built upon and honed in a workplace setting.

PEAT 1 and PEAT 2 should be viewed as a three year process with similar learning outcomes which are continually assessed over those three years. The vocational element links to the work-based stage and

work-based stage builds upon what is learned in the vocational stage. This means that there are a series of outcomes which apply across PEAT – PEAT 1 Outcomes and PEAT 2 Outcomes. For the first time, solicitors will know the minimum of what can be expected from a Day 1 Trainee, as that is demonstrated by the PEAT 1 Outcomes’.

Relevant information relating to PEAT 1

‘PEAT 1 should... be regarded as the programme that not only builds on the Foundation Programme, but specifically enables more effective learning to take place during both PEAT 1 and PEAT 2, through the Core Outcomes and PEAT 2 Outcomes. It is not an academic course but a programme of professional study and performance, with values that are significantly different from those of the Scottish Exempting Degree. It gives students the opportunity to reflect on that learning in a situation where there is the opportunity to learn close to the world of practice through simulation but free from the implications of live client work’.

It provides vocational training ‘between the academic stage, of the Foundation Programme, and the workplace environment of PEAT 2, which establishes the knowledge, skills, attitudes and values required for work as a trainee solicitor, and ultimately practice as a solicitor in Scotland’.

‘**Core Outcomes**’ are specified as the outcomes to be achieved in the areas of Professionalism, Professional Communication and Professional Ethics and Standards. ‘**Mandatory Outcomes**’ cover the core curriculum of Conveyancing, Private Client, Litigation, Business, Financial and Practice Awareness, and Tax (the latter to be taught

pervasively). Substantive and relevant legal knowledge underpins all of the outcomes.

PEAT 1 aims

‘PEAT 1 encapsulates core values underpinning Scottish legal education and is intended to:

- Develop the knowledge, skills, attitudes and values learned on the Foundation Programme, through the Mandatory Outcomes, Core Outcomes and Electives.
- Be indicative of a partnership between all those who have an interest in professional legal education and encourage collaboration and effective sharing of resources between them.
- Adopt best practice in the field of professional education and training and take as its core educational concept the benchmark of competence in legal practice whilst promoting excellence
- Assess ‘professionalism’ at the first of two postgraduate stages, the second being PEAT 2, with such assessment being valid, fair and reliable.
- Facilitate the development of skills and the integration of these with legal knowledge and ethical behaviour.
- Be of a consistent quality across different Providers, fit for its purpose throughout Scotland.
- Be flexible and open to innovation, particularly in models of delivery, methods of teaching and course delivery and the use of ICT.
- Actively ensure consideration of the client’s perspective and the development of public and client respect.

- Inspire individuals capable of creativity, being challenging and being challenged on legal thinking, critical thinking, and flexibility.
- Ensure and promote equality and diversity.
- Through all of the above, and particularly through the Core Outcomes, prepare the student fully and properly for starting PEAT 2.'

(Note: There is no overt mention of judgement or problem solving.)

Relevant information relating to PEAT 2

The learning outcomes for PEAT 2 use the same framework of including the core areas of Professionalism, Professional Communication and Professional Ethics and Standards with similar indicators. Specifically, Professional Relationships and Team working includes the outcome: 'works effectively as part of a team' with a positive indicator of 'exercises sound judgement as to when to refer issues outside own competency level to someone more senior'.

The key training responsibilities for practice units supervising trainees over the course of PEAT 2 are that they should:

- Provide the trainee with the opportunity to acquire the knowledge, skills, attitudes and values necessary to meet the 'standard of the qualifying solicitor'.
- Offer additional training which allows trainees to gain practical experience in law and opportunities to develop their skills, knowledge and values.
- Provide the trainee with experience of applying the law in real life situations.

- Give regular feedback throughout their training including PQPRs which must be submitted to the Society.
- Provide opportunities to undertake and assist trainees in identifying TCPD which supports achievement of the PEAT 2 Outcomes.

The key training responsibilities for trainees undertaking PEAT 2

are that they should:

- Maintain a regular diary in their PEAT 2 Record, linking the experience that they have gained to the skills and knowledge that they have developed. This recording will link to the PEAT 2 Outcomes and PQPRs undertaken with their training solicitors.
- Prepare adequately for PQPRs including, where necessary, undertaking a self-assessment of their performance and considering what areas they feel they need to develop.
- Reflect upon the outcome of PQPRs and informal reviews and ensure that the lessons learned are incorporated into their practice.
- Update and expand knowledge of the law, legal practice and legal procedure in areas of expertise without prompting
- Undertake a minimum of 60 hours TCPD over the course of PEAT 2 including undertaking the four hour mandatory ethics course from an Authorised provider
- Log all of the above in a bespoke trainee area hosted on the Society's website.

Work Allocation

Practice units should ensure that the work and tasks allocated to trainees are of an appropriate level and that they are gradually ramped up in terms of difficulty, complexity, frequency and intensity over the course of PEAT 2. Trainees should be encouraged to suggest solutions independently.

Appendix 2 SRA Principles and Outcomes Overview

The following is a summary of the Principles and Outcomes required by the Solicitors Regulation Authority sourced at

<http://www.sra.org.uk/solicitors/handbook/handbookprinciples/content.page>.

The Principles

‘These regulations form part of the Handbook, in which the 10 mandatory *Principles* are all-pervasive. They apply to all those *we* regulate and underpin all aspects of practice. Outcomes relevant to education and training are listed beneath the *Principles*.

You must:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow *your* independence to be compromised;
4. act in the best interests of each *client*;
5. provide a proper standard of service to *your clients*;
6. behave in a way that maintains the trust the public places in *you* and in the provision of legal services;
7. comply with *your* legal and regulatory obligations and deal with *your* regulators and ombudsmen in an open, timely and co-operative manner;
8. run *your* business or carry out *your* role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
9. run *your* business or carry out *your* role in the business in a way that encourages equality of opportunity and respect for diversity; and
10. protect *client money* and *assets*.

Outcomes

The outcomes which apply to these regulations are that, if *you* qualify as a *solicitor, you*:

- will have achieved and demonstrated a standard of competence appropriate to the work *you* are carrying out;
- will have had such competence objectively assessed where appropriate;
- will have undertaken the appropriate practical training and workplace experience;
- are of proper *character and suitability*;
- will have achieved an appropriate standard of written and spoken English; and
- act so that *clients*, and the wider public, have confidence that (the above) Outcomes have been demonstrated.

You must achieve, and where relevant continue to meet, these outcomes.’

Education and training

The requirements in relation to education and training are found at <http://www.sra.org.uk/solicitors/handbook/trainingregs2014/part3/content.page>.

Note: The Training Regulations were updated on 1 July 2014. This section of the Appendix is based on the 2011 version which was the relevant version when the research was completed.

Appendix 3 Legal Education and Training Review Summary

In January 2011, the Solicitors Regulatory Authority, the Bar Standards Board and ILEX Professional Standards commissioned a joint fundamental review of the legal and educational requirements of individuals and entities delivering legal services as a response to external market pressures. They tasked the appointed reviewers to carry out research and issue a number of reports and consultation documents. The first of these was a Literature Review that provided a detailed analysis split into eight headings:-

1. Framework and methods
2. Legal education, professional standards and regulation
3. Legal education and conduct of business requirements
4. Education standards and entry to formal legal education
5. Continuing Professional Development
6. Requirements made of approved providers of legal education and training
7. Current Equality, Diversity and Social Mobility Issues
8. Key regulatory issued: International comparisons of professions and jurisdictions

This identified a number of significant pressures for change including:-

- increased globalisation, multiple jurisdictional knowledge and specialisation,
- increased consumerisation, client legal literacy and expectations of service delivery,
- increased external and multiplicity of regulation and routes to qualification and entry,

- the impact of information technology on how legal services are delivered, and
- increasing student numbers, escalating costs of higher education and difficulties in finding formal training contracts.

This was followed by a number of Briefing, Discussion Papers and Headline Papers:

- Discussion Paper 02/2012 Key Issues 11 and Developing the detail
- Discussion Paper 02/2011 Equality, diversity and social mobility
- Discussion Paper 01/2012 Key Issues(1); Call for evidence
- Briefing Paper 3/2012 Provocations and Perspectives by Professor Richard Susskind
- Briefing Paper 2/2012 Future workforce demand in the Legal Services sector
- Briefing Paper 1/2012 Knowledge, skills and attitudes required for practice at present
- Briefing Paper 1/2011 Competence
- Research update 12/02 Workforce development: progress and headline findings
- Research update 12/01 – Contextual analysis: progress and headline findings.

These in turn generated a number of significant papers and commentaries that include:-

- The education and training for solicitors: time for change (Mayson, S. (2011) *The Law Teacher* 43: 3, 278-293)

- Legal Education and Training Review Response to Discussion Paper 02/2012 (The Law Society October 2012)
- Reforming Legal Education: Issues for the Legal Services Board (Legal Services Institute January 2012)
- Education and Training: Its role in regulation? (Legal Services Board February 2012).

Note: For the purpose of this research the most relevant documents are Briefing Paper 1/2012 and Research Update 12/02 as they analyse in detail the knowledge, skills and attitudes required for practice. In addition to technical law, such as Contract, Land Law and Human Rights, these include legal research, oral advocacy, negotiating, honesty and integrity. While they make no overt mention of ‘judgement’ in either their listing of current skills or ‘missing’ skills, knowledge, behaviours and attitudes, some elements of the underpinning elements derived from King and Kitchener (1994), Cheetham and Chivers (1994) and Aaronson (1998) described in Chapter 2) are mentioned such as ‘identifying and understanding problems, solving problems, explaining in a way that clients can understand, initiative, common sense/sense of proportion’.

The Review culminated in its ‘Setting Standards: The future of legal services education and training regulation in England and Wales Report issued in July 2013 (LETR 2013). It contained 25 Recommendations divided into the following headings:

- Outcomes and standards
- Content
- Structures

- CPD and continuing learning
- Apprenticeships, paralegals and work experience
- Information and collaboration

The underlying themes of its Recommendations (detailed below) include:-

- increased flexibility in relation to routes to entry, including the development of vocational apprenticeships to allow non-graduate entry,
- more emphasis on work-based learning,
- more focus on ethics and professionalism, and
- more emphasis on the skills of legal research, commercial awareness, communication and advocacy.

In summary, there should be widening of routes to entry to the solicitor profession with more similarity between outcomes and standards across all routes so as to allow people to make career changes, with all requiring a period of supervised practice. Such supervisors should receive 'suitable support and education/training in the role' (Recommendation 16 p290) The main emphasis in relation to changes to content focus on ethics and legal values as well as skills gaps in commercial awareness, legal research skills and communication (writing and drafting), albeit that Recommendation 3 states that 'learning outcomes for prescribed qualification routes into the regulated professions should be based on occupational analysis of the range of knowledge, skills and attributes required' (p286).

Developments since LETR 2013

Since its publication, the SRA has issued a number of follow-up publications including its Policy Statement ‘Training for Tomorrow: ensuring that lawyers of today have the skills for tomorrow’ (SRA 2014b) has as its objectives:

- To focus the education and training system on ensuring that those who deliver legal services meet our standards with less emphasis on the process by which high quality outcomes are achieved.
- In doing this to increase flexibility for higher education institutions, vocational training providers and employers to come up with innovative and efficient ways of achieving the necessary outcomes.
- To ensure that the education and training system can adapt over time to take account of changes in legal services markets.
- To target our activities as a regulator on protecting the public interest, including consumer interests, in a proportionate manner.

‘One of our objectives is to move from a process under which we, as regulator, unduly influence the structure of the education and training system to one in which there is greater variety and choice. Our proposals could facilitate a number of changes including:

- A widening of access to the profession and entry by those who are less likely to progress through more traditional pathways – this could be through "apprenticeship" or other new schemes.
- The development of integrated academic, vocational and "on the job" training courses.
- The possibility for those working in various roles in legal services organisations (including as paralegals) to demonstrate that they have the knowledge, skills and attributes to qualify as solicitors without going through the current tightly structured process.

- Individual entities developing their own internal post-qualification professional development processes to satisfy continuing competence requirements.
- More targeted post-qualification training, for example ensuring that those who hold specific responsibilities in a legal practice, such as for financial management, undertake relevant training.'

Appendix 4 PEAT 2 On-line log

PEAT2 Journal Record x

https://www.lawscot.org.uk/WCM/Issservices/MemberServices/MyAccount/PEAT2/PEAT2_Record/Issservices/Member_Services/PEAT_2/PEAT2_Journal

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Home | About Us | Find a Solicitor | Rules & Guidance | Education & Careers | For Members | For the public | News | Events

Home » Member Services » My Account » PEAT2 » PEAT 2 Record

My account

- Account details
- Categories of work
- Areas of interest
- Scottish Law Reports
- Find a Locum
- Edit details
- Change your password
- Event programme
- Shopping basket
- My events
- CPD
- PEAT2
- Trainees Supervised
- Trainee Data

PEAT 2 Record

This page of the website is your personal log. Throughout PEAT 2, you should maintain a regular log of the experience(s) that you have gained. This recording should link to the PEAT 2 outcomes and any previous relevant PQRs undertaken with your training supervisor.

It is important to note that it is possible for your training supervisor to view this record.

It is of the utmost importance that trainees do NOT upload confidential information to their PEAT 2 record. Trainees must not upload any of the following:

- Client information and details
- anything that could identify a client
- Project or matter terminology (including project names)
- Details which could identify a specific project or matter

PEAT 2 Record

Date ↑	Relevant PEAT 2 Outcome	Text
There are no records.		

Listen PEAT 2 Record

start

14:16

Appendix 5 Interview questions for case studies

Interview – Training Partners/HR Director

Thank you for agreeing to take part in an interview in relation to my research into how employers are developing the professional judgement of their trainees.

The information obtained in the interview will be kept confidential between us and anonymised in my formal write-up.

To give you an indication of the topics that I would like to cover with you and to allow you time to reflect on these in advance of the interview , the questions that I would like to cover with you include:-

1. How is the firm developing the professional judgment of your trainees?
2. Why do you think that is important?
3. How do you use the PEAT 2 processes?
4. How useful are they?
5. What do they support the development of?
6. What gaps or omissions do you think there are?
7. What additional support have you developed?
8. Why do you use this additional process?
9. How do you assess individual trainee progression?
10. How do you explain this to trainees?
11. How do you train your supervisors to support their role in trainee development?
12. Is there anything else that you would like to add?

Interview – Supervisors of trainees

Thank you for agreeing to take part in an interview in relation to my research into how employers are developing the professional judgement of their trainees.

The information obtained in the interview will be kept confidential between us and anonymised in my formal write-up.

To give you an indication of the topics that I would like to cover with you and to allow you time to reflect on these in advance of the interview , the questions that I would like to cover with you include:-

1. How is the firm developing the professional judgment of your trainees?
2. Why do you think that is important?
3. How did you develop it yourself?
4. How to you use the PEAT 2 processes?
5. How useful are they?
6. What do they support the development of?
7. What gaps or omissions do you think there are?
8. What additional support have you developed?
9. Why do you use this additional process?
- 10.How do you assess individual trainee progression?
- 11.How do you explain this to trainees?
- 12.How are you trained to support your role in trainee development?
- 13.Is there anything else that you would like to add?

Interview – Trainees

Thank you for agreeing to take part in an interview in relation to my research into how employers are developing the professional judgement of their trainees.

The information obtained in the interview will be kept confidential between us and anonymised in my formal write-up.

To give you an indication of the topics that I would like to cover with you and to allow you time to reflect on these in advance of the interview, the questions that I would like to cover with you include:-

1. How is your professional judgement being developed?
2. Why do you think that is important?
3. What are you doing to develop it yourself?
4. How useful do you find the PEAT 2 processes?
5. What do they support the development of?
6. What gaps or omissions do you think there are?
7. What additional support are you offered by your firm?
8. How useful is this additional support?
9. How is your progression measured or assessed?
10. How is this explained to you?
11. Is there anything else that you would like to add?

Appendix 6

Case studies based on interviews with law firms employing trainees - Scotland

- **Case Study 1 Solicitors**
- **Case Study 2 Solicitors**
- **Case Study 3 Solicitors**
- **Case Study 4 Solicitors**
- **Case Study 5 Solicitors**
- **Case Study 6 Solicitors**
- **Case study 7 Solicitors**

List of interviews completed (60 individuals)

	Training Partner/HR Director	Supervisors	Trainees
Scottish Case study 1	2	3	5
Scottish Case study 2	1	3	6
Scottish Case study 3	2	3	6
Scottish Case study 4	1	3	5
Scottish Case study 5	1	1	3
Scottish Case study 6	2	2	5
Scottish Case study 7	2	1	3
Totals	11	16	33

Case Study 1 Solicitors (Pilot)

Details of firm

Long established Scottish law firm (trading as a Limited Liability Partnership) with offices in Glasgow, Edinburgh and London providing legal services to businesses and individuals including litigation, employment, family, commercial and residential property, corporate and intellectual property. These services are delivered by distinct units (departments) within the firm. Size: 29 partners, 100+ staff and 12 trainees.

Interviews were held with the Training Partner, HR Director, supervisors (3) and trainees (5) in relation to the development of professional judgement and the learning support provided by their TCPD programme and PEAT 2 processes. A draft list of questions was submitted for approval to the Training Partner and HR Director and agreed and circulated in advance of the interviews. Contemporaneous notes were taken of each interview.

Culture and approach

The firm regards its recruitment and employment of trainees as an important part of its commitment to the Scottish legal profession and therefore ensures that its culture supports individual and organisational learning. As a result, it selects its trainees from law students undertaking summer placements with them so as to allow both to make an assessment as to whether they will 'fit' their culture. Once recruited, it exposes trainees to its more experienced people as much as possible and selects training supervisors who will be supportive and are exemplars of the firm's identity and approach to client service delivery.

In 2011, the firm decided to obtain Law Society of Scotland accreditation for its Trainee CPD (PEAT 2) provision rather than rely on external providers. The driver behind this was to formalise their existing provision of trainee support and tailor the achievement of the Learning Outcomes required for TCPD to the work undertaken by their trainees so as to enable both supervisors and trainees to both recognise and demonstrate their investment in training and professional development.

The firm completes the formal review processes and forms required by the Law Society for PEAT 2 compliance. In addition, the firm provides a formal Induction as well as in-house training in specialist topics which every trainee requires to attend. Each service unit within the firm has training supervisors with the firm using ‘seat rotation’ to ensure that every trainee obtains work experience (between 4-6 months) in different aspects of legal work. Typically trainees move into a litigation seat in Year 2 as at that point, they can obtain a ‘restricted’ certificate to practice that allows them to appear to a limited extent in court so as to enable them to develop their advocacy skills and procedural knowledge.

Findings from the interviews

The Training Partner explained how he saw the importance of developing the judgement of the firm’s trainees. ‘The development of the judgement of trainees is:-

1. important as part of their own career development,
2. important for firm as we are delivering a service so we want our people to be able to exercise their judgement professionally,
3. very important for the profession as a whole that we as solicitors are able to form a judgement, and

4. becoming even more so to allow us to be able to respond to what law firms will look like 10 years from now. They will need both legal judgement and entrepreneurial flair – lawyers will need to be specialist advisors so will need to understand that environment and what clients come to you for.

I find that, at the outset of each PEAT 2, we need to cover what we expect from ‘legal judgement’ so it is important to get trainees to be able to research the law and identify the ‘ratio decidendi’ (i.e. the principle behind the decision chosen).’

He described that it was important to be seen as approachable and that ‘good trainees’ seem to understand what is expected of them quickly. In relation to seat rotations, they try to give them early exposure to clients but this is easier in some departments who handle lower risk less complex work – for example, ‘changes to court processes and claims levels has resulted in less routine court work so difficult to ‘teach them court craft at an early stage in the way that could do in the past’.

The supervisors explained the approaches that they adopted to develop the judgement of their trainees in a similar way: that they looked at each trainee as an individual and assessed what aspects of their practice needed to be developed as they ‘are all very different so give them a couple of things at the beginning to see where they are’. This could be drafting skills, research abilities and/or personal confidence. They then allocated the trainee client work as the ‘correct’ level for him/her and by direct observation kept an eye on their performance and progress.

Whenever possible (‘as 4-6 months is not that long’) they gave them ‘a whole transaction to run with under close supervision so as to expose them to determining a range of solutions. They need to understand the

scope of their engagement – what they are expected to do and what they should not do’. ‘I want to be seen as approachable so encourage them to come and ask me when they need help but want them to come with a suggested solution rather than expect me to tell them what to do, although sometimes it is difficult to find the time when you are busy’.

When asked about the development of their own professional judgement, they spoke of the ‘need to be doing it – where your action causes a reaction’. They mentioned specific cases and/or particular mentors that had accelerated their progression. For example, ‘I had just taken on a big Court of Session file when my boss went on holiday for a month and everything blew up. Senior Counsel (QC) was phoning me asking me to prepare expert witnesses and I had to take statements from a lot of people and brief counsel about what questions to ask. I developed confidence in myself and that I did know what I was doing when counsel seemed to trust my judgement. The case ran for 66 days in court and I was able to sit then seeing the QC on his feet founding on the information I had prepared for him. I was completely immersed in it – the process, relationships, the facts and the law.’

The trainees found it difficult to reply to the pre-circulated questions. In particular they asked what was meant by ‘professional judgement’ as they were not familiar with the term. As a result, the interviewer had to explain the background of where professional judgement sits in relation to career progression and its importance in terms of client service as well as outline the composite elements of judgement, including assessment of risks, making decisions and management of clients’ expectations. The questions were then adjusted to encourage interviewees to offer specific examples of where they felt their ‘judgement’ had been encouraged

and/or developed. These tended to focus on ‘legal’ judgement (i.e. development of their ability to interpret and apply the law) rather than encompassing achieving client- facing solutions.

In relation to their daily work, they explained that the training and levels of responsibility varies between departments and that it ‘is difficult to appreciate how much you have learned until after the event and that you don’t realise what you have picked up as you go along’. They described that the PEAT 2 processes are ‘not always kept up to date as it depends on how much your supervisor pays attention to it’ and ‘that quarterly is too often to come up with evidence of what you have done’ and that ‘when move to new seat feel like the new girl at school every time as you have to find someone to explain how things are done in this department as it is essential to have someone as a buffer between you and the partner’. All enjoyed the opportunity to shadow more senior people when given the chance to do it.

Positive learning elements

In general, trainees and supervisors enjoyed the structure and content of training support offered within the firm. Both trainees and supervisors felt that the most valuable method of embedding learning was through direct observation of more senior people actually doing their job (i.e. role models). Specific examples offered of how this is achieved included those of a ‘community of practice: i.e. physically working closely together on a daily basis, going along to client meetings, consultations and court and more generally, shadowing and observing experienced people. Supervisors assess the strengths of individual trainees as they arrive with them so as to identify what would be the most appropriate matter or piece of work to allocate to them as well as build individual confidence and/or address any behavioural problems. As a result, they

often give them a couple of small tasks to do to see where they are in relation to research and drafting and how they handle priorities and clients. Wherever possible they allocate work that allows the trainee to see the whole file/case progress through to its conclusion and will include dealing direct with the client and solicitor on the other side so as to learn how to assess, respond to and manage their expectations.

All commented that it is essential to take the time to explain not only the options/choices available at each stage of the matter but even more importantly why this is the case. All also spoke of the importance of being approachable and ideally working in the same room/location so as each is able to ‘overhear’ the other as they do their work.

Seat rotations are seen as a necessary part of developing the skills necessary to be an admitted solicitor. However, supervisors commented that it was essential to emphasise the transferability of skills, especially when the trainee appeared not to be ‘interested’ in the work being carried out by that specific unit.

Regarding completion of the quarterly PEAT 2 forms, these were generally felt to be difficult to complete with specific examples over such a short time period. Trainees commented that often they only realise what they have learned/gained after they move to the next seat in their rotation of units.

Key developmental methods identified by trainees

- Direct exposure to senior people. Consultations with senior counsel in particular illustrated the respective elements of the essential elements: an explanation of the relevant law, what options exist, what the client’s resources are (time, money) and an

explanation of why making that particular choice/recommendation.

- Being involved in whole matter/transaction and being able to see it all through so to see the impact of their own decisions and actions.
- Sometimes being given more responsibility than perhaps he/she would be comfortable with (i.e., being asked to move out of immediate comfort zone).
- ‘When senior people demonstrate that they have now confidence in your judgement’.

Key developmental methods identified by more senior people

- Being able to take the time to assess and respond to each trainee’s level of knowledge, skills and experience as they rotate into their unit.
- Select right level of work for the individual trainee (complexity of file and client sympathetic to having a trainee doing the work).
- Allow the trainee to be involved in whole case or matter so as to see the impact of choices and decisions at each stage.
- Allow trainee to sit closely beside them so as to be able to ‘overhear’ each other.
- Being accessible and approachable and take the time to explain fully.

Case Study 2 Solicitors

Details of firm

Long established Scottish law firm with offices in Edinburgh and Glasgow providing legal services to businesses and individuals including litigation, employment, family, commercial and residential property, corporate and intellectual property, 24 partners, 140+ staff, 10 trainees.

Interviews were held with the Training Partner, supervisors (3) and trainees (6) in relation to the development of professional judgement and the learning support provided by their TCPD programme and PEAT 2 processes. A draft list of questions was submitted for approval to the Training Partner and agreed and circulated in advance of the interviews. Contemporaneous notes were taken of each interview.

Culture and approach

The firm's business strategy is to grow organically rather than by mergers or targeted head-hunting of new partners so it places considerable importance on its trainee recruitment as 'they will be our partners of the future'. It is determined to maintain its reputation in the marketplace to provide high quality, expert legal services so it is essential that the trainees are able to fit in to this so they aim to recruit the 'brightest' – not just people who are good at passing exams but those that show inter-personal skills and enthusiasm. They rely on recruitment through their summer placement programme rather than simply look at people's cvs. They recruit two years in advance to as to be able to 'get first pick' of the graduates. Their TCPD programme is accredited by the LSS as they want their trainees to be trained into their style of working

with clients and includes four seat rotations of six months each of Private Client, Property, Commercial and Litigation Departments.

Findings from interviews

The Training Partner described that the firm supports the development of professional judgement of trainees in a number of ways that included both actual training as well as encouraging them to take responsibility for their own files. The firm had developed its own in-house TCPD training programme that includes skills based sessions as well as seminars on legal topics. She explained that all of the staff were encouraged to improve and that across the firm training sessions were available, both skills based and on legal topics - ‘we see this as a good opportunity to share knowledge and also for the person taking the seminar to develop skills, for example in giving presentations’. Their Offices were entirely open plan – ‘we see this as a positive, particularly for more junior members of staff like trainees as they have the opportunity to observe more senior colleagues and to ask questions or join in discussions with the rest of their teams’. Supervisors are expected to take time to explain aspects of a transaction or case to the trainee so as to provide a better understanding of the context in which a particular task is being undertaken and every trainee has a mentor in accordance with the Law Society of Scotland’s PEAT 2 requirements and the mentors receive training to help fulfil their role.

Everyone sets objectives for the coming year and reviewed twice a year – ‘a great deal of the effectiveness depends on the line manager as there are those who only pay lip service to the programme and regard it as a form filling exercise, rather than as an opportunity to develop those they supervise’.

She explained that each trainee development is measured largely against achievement or otherwise of these annual objectives, which, again, works better for some than for others as the assessment of whether or not an objective has been met is made by the line manager and a lot depends on their expectations.

‘Your questions prompted me to look back on how I had developed my own judgement – it was not always an easy route – in the early years, I learned more from mistakes and even now these still ‘get to me’. I have learned through experience that my judgement is often right but I still set great store by being able to seek the views of others. In my experience this can help, sometimes by confirming my own view and sometimes by providing a fresh perspective.’

The supervisors were not sure that the firm focussed at all on ‘judgement’ – ‘we certainly look at risk management and client service quality but not sure that we want the trainees to be ‘exercising judgement. We would prefer that they did what they were asked – at the stage they are at do they have enough experience to make a judgement call?’ They expressed concern that some of the trainees seem ‘too young – have no life experience so difficult for them to understand what is involved in solving ‘messy problems’.

In relation to the question about how they had developed it themselves, they offered that it depended on where were trained, for example, in a large firm, there was a hierarchy of who could go to and very rarely ‘bothered partners’ who kept their doors shut (yet were often perceived by clients as very good’). It was best always to go to assistant first and get some guidance and re-assurance. With those that had been trained in

smaller firms, there was much more direct contact with senior people so easier to ask them for help.

‘At beginning, I tended to copy the actions and approach of senior colleagues. However as became I became more confident myself, and my knowledge and ability increased, my critical and analytical skills improved so I felt more able to adopt my own approach.’

‘Development of my professional judgement acquired by listening and observing, discussing situations and by reflecting on what had been done. Much was also through trial and error.’

They agreed that the PEAT 2 structure and processes are used to attempt to ensure consistency of approach, content, review and progression, but offered that some departments were better at it than others and some people better at supervision than others. It was felt that some departments are better suited than others to having actual work available for a trainee to do – other than legal research and ‘opinion writing’ as in some departments the clients’ work was high risk and complex as well as files make take years to conclude (e.g. Court of Session civil litigation).

They enjoyed the supervision of the trainees although some take up a lot more time than others (and had had no formal training in how to do it) – ‘I wonder whether they have all ‘passed’ the same exams and assessments as difficult to make any assumptions about what they know in relation to both the law and how to find it’. ‘It doesn’t even seem to be the same when they have been to the same university for degree or Diploma. Seems to depend on how practical they are and how well they get on with other people.’

They agreed that it is good to have them sit near so can keep an eye on them and see what is going on/hear what they are saying – ‘sometimes difficult to balance between being accessible and getting on with your own work – perhaps easier when out of the office at court to talk to them informally about what planning to and what just happened, yet not so easy to give them practice as not yet able to appear in court. Private client easier to ‘let them have their own files, clients and responsibility’ – some very hesitant, some overconfident and casual.... ‘

The trainees all said that they had not thought about professional judgement specifically before so couldn’t really answer the question in relation to how they were developing it.

They explained that they now appreciated that clients are looking for a specific answer – want to get clear concise advice then happy to pay the fees. How much exposure they had to clients and seeing how things are done depended on what team they were working in – were allowed to shadow and observe (and take notes at) client meetings. One offered that the best example was attending consultations with senior counsel – ‘you can learn a lot from advocates – you are able to talk to them about what want to know, they explain a range of options’. ‘Within the firm, some people are very good at explaining their thinking, others are not.’

In relation to the PEAT 2 processes all agreed that it is difficult to gauge whether you are doing well or not and that having the formal reviews quarterly is perhaps too often as not always easy to show progression and take a lot of time to prepare for. In relation to rotating seats, they felt that sometimes seem to have to go back to basics which is frustrating. The in-house training in ‘interviewing sessions’ with role

play was felt to be more intensive and focussed and the trainees thought that it worked well.

In relation to the formal structure of mentoring, all explained that they can go to get help when need it –‘perhaps that is an illustration of helping you develop judgement as you make a decision about when you need help’.

Key developmental methods identified by trainees

- Sitting close to people so as to be able to overhear them
- Getting feedback on working drafts and comments about style of writing

Key developmental methods identified by more senior people

- Having the right level of work available for them
- Allow the trainee to be involved in whole case or matter so as to see the impact of choices and decisions at each stage
- Allow trainee to sit closely beside them so as to be able to ‘overhear’ each other
- Being accessible and approachable and take the time to explain fully

Case Study 3 Solicitors

Details of firm

Long established law firm based in Scotland with offices in Edinburgh, Glasgow, Aberdeen and London providing a wide range of legal services. 50+ partners and 400+ staff with 30 trainees.

Research

Interviews were held with the Training Partner, HR Director, supervisors (3) and trainees (6) in relation to the development of professional judgement and the learning support provided by their TCPD programme and PEAT 2 processes. A draft list of questions was submitted for approval to the HR Director and agreed and circulated in advance of the interviews. Contemporaneous notes were taken of each interview.

Culture and Approach

The firm has obtained Law Society of Scotland accreditation for its Trainee CPD (PEAT 2) provision. The driver behind this was to ensure that the training and support provided was directly relevant to their business. The firm complete the formal review processes and forms required by the Law Society for PEAT 2 compliance. Each department within the firm has training supervisors with the firm using 'seat rotation' to ensure that every trainee has work experience in different aspects of legal work. In addition, the firm provides a formal Induction as well as in-house training in specialist topics which every trainee requires to attend. They also send trainees on secondment to key clients (financial services and government).

Findings from the interviews

The firm is currently undertaking a project to look at the ‘role of the trainee’ as the **HR Director** explained that she had some concern that there is too much emphasis on the trainee being a fee earner from day one with the result that time cannot be written to anything that is not client chargeable. As a result they have a current project looking at ‘what are trainees here to do, for example do meaningful legal work’. She also questioned - can professional judgement be taught? Although she felt that the firm would not appoint a Partner who was not able to exercise good professional judgement she stated that it was not included in their Competency Framework for Associates and any of the other levels within the firm.

The Training Partner described the importance of judgement is that it is ‘what clients are paying us to do, that’s what clients are buying from us - the unspoken and crucial part of being a lawyer – I have to make a judgement all of the time - clients can get the law but what they want from us is our judgement, our recommendation’.

She is involved in supporting trainees in both PEAT 2 and the SRA (English) processes – she feels that although they are different in content and approach ‘they are really only a different way of getting to the same result’.

She stated that she felt that ‘electronic communication was taking away direct client contact so not the same opportunity for trainees to attend client meetings which is the way that people traditionally learned’. Their trainees are offered four seats in pretty specialised departments such as banking or intellectual property which allows them to choose (so far as we can accommodate them) what they want to focus on’. ‘We

deliberately put them out into the teams as we want them to be near someone quite senior as well as near someone to ask more routine questions’.

The supervisors felt that they were continuing to adopt the same approach that they had experienced themselves in relation to training trainees, in other words, working alongside them, spending time explaining things to them and keeping an eye on how they were doing. All described the importance of having good judgement for example, ‘exercising my judgement is the most important part of my job – I need to know and understand that client otherwise I am not worth the money. I learned most from working under the tutelage of an experienced practitioner who took me under his or her wing and explained things to me – for example, the real value of having a more senior lawyer who regularly at the end of a working day stayed on to give me a ‘gift of her time’ by sitting with me and explaining different aspects of client files – both the commercial and ethics of them as well as showing me that she was willing to invest that time in me’. Another explained that confidence comes from knowing the law so he always asks the trainee to do the legal research and not just prepare a summary but come up with his or her recommendations on the course of action. Another explained that he wants them ‘to make decisions even if they get it wrong, provided they go about it the right way’ and that ‘want to see them developing initiative and some judgement of what is ok to do so then give them more direct contact so that they learn to stand on their own two feet’, ‘it is important to get to know them so as to be able to trust them with more autonomy – looking for attention to detail’. Another commented that it was ‘difficult as there was little low risk to give them to do’.

The new PEAT 2 places direct responsibility on each trainee to review what achieved since last quarterly review and identify further development needs. The supervisors explained the process is resulting in little ‘discussion’ with and ‘input’ from the supervisors and is therefore limited by how self-aware the trainee is and how much he or she is aware of what development opportunities exist in the firm. One supervisor confirmed that she did as for feedback from other departments and for secondments and that it was important to get specific examples at the time as the self-awareness of trainees is not always the same’.

The trainees felt that their access to senior people was somewhat limited and that for example, they had got ‘more chance to shadow and sit in on meetings, court hearing and tribunals when they had summer placements than they do as trainees where the emphasis now is on the need to be ‘chargeable’’. Although they sit in open plan offices with senior people they only can overhear snippets of their telephone discussions rather than observe them in direct face to face session with clients and other lawyers. They described that the extent of their training depended on who you were working to as so people did ask ‘what do you think? What is your opinion?’ and that some departments, such as ‘property where there is lots of team updates, it is easier to get hands on and run your own transactions and have direct meetings with real clients’.

‘The PEAT Learning Outcomes are both vague and overly prescriptive at the same time and difficult to evidence and demonstrate progression as they don’t seem to fit what being asked to do – it may be more helpful to have them more intensive in the beginning when you need more feedback to help build your confidence and less so later on.’ They advised that not all supervisors put the same effort into preparing for the

review sessions. In addition, in relation to handover of seats that ‘you are left to sort it out yourselves’. They described that secondment allows them to develop personal confidence and the wider aspects of judgement. Working within the client organisation means that they have to develop on their own and learn to adapt to what the client’s drivers and communication style and culture is - ‘secondment develops different aspects of professional judgement for example commercial awareness and being quicker to the point’. Similarly being involved in pro-bono Law Clinic work provided a different side of client work – where clients don’t have a lot of money and have real personal problems.

Positive learning elements

The trainees have found the structure and content of the TCPD programme practical and helpful. In particular, trainees found the Negotiation and Advocacy skills courses particularly useful in allowing them to develop what they see as core skills for solicitors.

Supervisors and trainees felt that developing professional judgement was achieved through being able to observe more senior people doing the job. Wherever possible, supervisors ensure that trainees get to see the whole file/case progress through to its conclusion. Once they have confidence in them, they allocate trainees direct responsibility to deal with the client and solicitor on the other side so as to learn how to assess, respond to and manage their expectations. Positive feedback was felt to be important. In particular, when a trainee identified a development need, such as improving drafting, it was essential to comment when there was evident improvement. Supervisors see themselves as ‘role models in action’ and as a result, want to be approachable and receptive when trainees come for advice and help.

All spoke of the importance of working in the same room/location so each is able to ‘overhear’ the other as they do their work. In addition, in relation to when specific decisions are made on client recommendations, it is thought necessary to take the time to explain not only the options/choices available at each stage but even more importantly why this is the case and the thought processes involved.

Regarding completion of the quarterly PEAT 2 forms, these were generally found to be useful although sometimes difficult to provide specific examples that matched up the individual learning outcomes that could be repetitive.

Key developmental methods identified by trainees

- Induction is comprehensive and valuable
- Sitting within the teams so as to be able to observe and hear senior people working at the same time as being able to ask questions if need help
- Team and department meetings and internal training
- Trainees’ direct involvement in team discussions about what the problem is and being asked ‘what do you think? what is your opinion?’
- Specific practical training skills sessions (Negotiation, Advocacy) where able to spend a whole day concentrating on developing these skills
- The Ethics course is useful as it is practical and applicable to work situations
- CAB (LawWorks initiative) offers a good way to demonstrate client facing skills

- Secondments are seen as useful in relation to developing different (i.e. commercial) aspects of professional judgement as well as learning to work using own initiative

Key developmental methods identified by more senior people

- Open plan working so can observe and overhear what individual trainees are doing

Case Study 4 Solicitors

Details of firm

Long established law firm based in Scotland with offices in Edinburgh and Glasgow providing a wide range of legal services. 30+ partners and 100+ staff with 15 trainees.

Interviews were held with the HR Director, supervisors (3) and trainees (5) in relation to the development of professional judgement and the learning support provided by their TCPD programme and PEAT 2 processes. A draft list of questions was submitted for approval to the HR Director and agreed and circulated in advance of the interviews. Contemporaneous notes were taken of each interview.

Culture and approach

The firm has obtained Law Society of Scotland accreditation for its Trainee CPD (PEAT 2) provision. The driver behind this was to ensure that the training and support provided was directly relevant to their business as well as generating an understanding of ‘their way’ of doing things. The firm complete the formal review processes and forms required by the Law Society for PEAT 2 compliance. Each department within the firm has training supervisors with the firm using ‘seat rotation’ to ensure that every trainee has work experience in different aspects of legal work.

In addition, the firm provides a formal Induction as well as in-house TCPD programme of training in specialist topics and skills which every trainee requires to attend. They also send trainees on secondment to key clients (banks and financial services).

Findings from the interviews

The HR Director placed considerable emphasis on developing trainees who understand the difference between knowing what the law is and giving accurate legal advice. She described the exercise of professional judgement is ‘what we are being paid for – we are known for providing practical solutions and we talk a lot about our (brand) way of achieving that’. She developed the content of their in-house training to include not just knowledge and skills but also the firm’s culture and ways of behaving. Overall, she feels that the trainees are well integrated into the firm and the work of its departments and that the structure and content of their TCPD programme ‘achieves its design to provide legal and commercial knowledge and the skills required to deliver its practical application in ‘our way’ of doing things’. They use ‘role plays’ as a ‘safe’ way to try things out. They use their own review form rather than the LSS PQR one as they want to get them to see their contribution to the aims of the firm – ‘We also remind them to bear in mind that they are constantly being assessed’. She felt that ‘the PEAT 2 structure is useful with the less able trainees as it allows you to say this is what the Law Society wants and you are not achieving it’.

She explained that they have in recent years cut out some seat rotations in departments where they now use paralegals, such as residential conveyancing. In addition to being an important part of developing the skills necessary to be an admitted solicitor, discussions around and the selection of choices in relation to seat rotations provide a useful forum to talk about career progression once qualified and encourage trainees to think beyond simply completing PEAT 2 as well as review sessions at the end of the seat asking ‘do you think this area of the law is for you?’

In addition the firm uses secondments as well as shifting trainees between the offices.

The overall aim of the training is to build their skills and confidence so that they can ‘fly solo’ by gradually reducing their supervision and that ‘we have had people who were technically very good but incapable of condensing this for that client’. She explained that she selects supervisors who are interested in training the trainees as ‘you need a degree of confidence in yourself to be able to supervise’. The decision of who to offer newly qualified jobs to is taken by an ‘appointment board’ who will have discussions with the supervisors but quite often the ‘stars’ have been identified before the end of year 1.

The supervisors were interviewed as a group with one asking for supplementary information at the start of the interview – ‘when I saw this I thought what does ‘professional judgement mean’? I am not sure we can agree on a definition of PJ – commercial judgement is our internal decisions around fee levels etc.’ They confirmed that the firm’s programme of in-house training seems to work well and that the trainees are generally enthusiastic and receptive to being given responsibility and feedback in relation to their performance. They advised that the close working proximity of trainees with their supervisors allows both to observe each other’s work style and performance. They can then assess the strengths of each trainee as they are assigned to them by giving them routine work to complete usually involving the core skills of legal research and drafting. Once they have confidence in them, they allocate trainees direct responsibility to deal with the matter, observe them and provide regular commentary and feedback. They offered that sometimes due to work pressures, there ‘simply is not enough time to fully supervise with the result that the good ones then get more responsibility

and perhaps not enough supervision’ but that not all trainees were the same and that some seemed to be able to handle pressure better’. They confirmed that they completed the quarterly reviews, with the Training Partner sitting in on every second one as well as one-to-one every month when time allows. One supervisor commented that specifically does not ask previous supervisor when trainee rotates into her department as she does not the trainee ‘tarred with any baggage from the previous seat and that she had concerns about how transparent the selection of the newly qualified job offers were.

The trainees confirmed the value of having close working proximity with their supervisors in relation to learning and performance feedback. They felt that the most valuable method of developing professional judgement was through being given more responsibility and being able to learn from practical experience and that ‘are encouraged to take on some steps yourselves - experience develops most naturally through exposure – being able to observe, then build, build and build more’. In relation how they saw the exercise of professional judgement they felt that this was ‘what the firm is being paid to do yet it is not an exact science – have to consider the risks of different routes, commercial interests of clients and costs – no two clients are exactly the same so needs to be tailored to those circumstances and you have to be careful about the advice you give’.

In relation to the formal review processes, trainees value the opportunity these provide for general comments on how well they are doing and what areas they should concentrate on over the coming 3 months. Regarding completion of the quarterly PEAT 2 forms, these are generally found to be of limited use other than illustrative of progression through the required learning outcomes that are felt to be repetitive

although discussions are widened out into ‘what is going well? And what are you struggling with?’ The PEAT 2 resources on the firm’s intranet were felt to provide helpful examples of what is required to complete the required forms. They described that had a set in-house programme for year one including drafting and the role play session where partners played difficult client was useful to see how to handle such situations – good balance of structured training and exposure to good work to let you apply the training’. In addition, ‘you always feel that you can get help if you need it and you quickly learn who to go to when you have a real problem although you know that you are constantly being assessed which I found difficult at first’ and that progression varies between seats. The trainees advised that ‘we are given lots of targets – work in progress figures and fees recoverable so expected to be able to charge our time to clients’.

Key developmental methods identified by trainees

- Working in open plan teams allows trainees to observe and hear senior people speak to clients and colleagues at the same time as being able to ask questions if they need help and to talk through options and choices
- Trainees feel that being actively encouraged to take on more responsibility shows that more senior people have confidence in them
- Being involved in whole matter/transaction and being able to see it all through allows trainees to see the impact of their own decisions and actions which helps them build confidence that their own judgement call was correct

- Providing specific practical training skills sessions (for example, Negotiation, Client Interviewing) allows trainees to think about these in the application of these core skills in a variety of contexts
- Wider performance discussions as part of the quarterly reviews and in relation to seat choices helps trainees consider their long term career aspirations

Key developmental methods identified by more senior people

- Being able to have trainees to work within earshot so can overhear what they are saying to clients etc. over the phone

Case Study 5 Solicitors

Details of firm

Long established law firm based in Scotland with offices in Edinburgh and Glasgow providing a wide range of legal services, primarily private client and commercial property. 15+ partners and 60+ staff with 3 trainees.

Interviews were held with the Training Partner, supervisors (2) and all 3 trainees in relation to the development of professional judgement and the learning support provided by their PEAT 2 processes. A draft list of questions was submitted for approval to the Training Partner and agreed and circulated in advance of the interviews. Contemporaneous notes were taken of each interview.

Culture and approach

The firm has **not** obtained Law Society of Scotland accreditation for its Trainee CPD (PEAT 2) provision. They externally source the 40 accredited hours that are required. The firm complete the formal review processes and forms required by the Law Society for PEAT 2 compliance. Only the Private Client Department takes trainees with them remaining there for the two full years. Exposure to advocacy skills training is achieved in Year 2 through court appearances directly related to the work of the Private Client Department.

In addition, the firm provides a formal Induction as well as departmental in-house CPD programme of training in specialist topics and skills which every trainee requires to attend.

Findings from the interviews

The Training Partner advised that all of the current trainees had either worked as para-legals or worked with the firm over summer holidays and when doing their Diploma in Professional Legal Practice two days a week as well.

‘Professional judgement is the most difficult aspect to supervise and develop as all of the trainees start from a different platform so has to be done on a one-to-one basis. We sit in an open plan so we can hear what they are saying and this, plus checking over their letters and documents allows us to monitor them more closely. Letter writing in particular needs a lot of work – they may have the legal knowledge but they need to develop their communication styles. They are thrown by ‘uncertainty’ so they need to learn how to make ‘incomplete’ judgement calls and prioritise what they decide to do. We want them to show that they can take the initiative and move things on to the next stage. They are too used to rely on styles rather than working out first of all what the problem is and then work out what we have to do. They also don’t seem to appreciate that your professional reputation is at stake – if documents are sent back by the court as incomplete, if clients’ details are wrong that that is important! – it should mean something to them.

Risk management is an important issue for the firm – none of us should be advising outwith our own area of knowledge. As we do expose them to real clients, supervision is really important as we have to have an understanding of where each of them is – some are not confident enough, others too confident. They will make mistakes and will learn by doing. We get them to take face-to-face client meetings right from the outset and be personally responsible for that client and that file. We want them to take full ownership for their files and work out for themselves when

they are out of their depth. When they come to ask for help, they need to learn to deal with the client problem rather than expect us ‘fix it for them’. We try to give them the tools to let them do that, so we provide positive re-inforcement of what aspects they have handled well so as to give them the confidence to go back and deal with and respond to the client. In year 2 they go to court to do Guardianship hearings mainly so that they already know what the law is and should be familiar with the file. We run an external ‘carers’ clinic’ where people caring for people with capacity or health issues come in for free advice. I do it myself and you never know that legal advice you will be asked about (mostly Guardianship and Powers of Attorney) and I get the trainees to do sessions as it is good for them to apply what they do in the office in an external environment that is much less ‘certain’. We can monitor their conversion rate i.e. does the potential client become an actual client of the firm?

My own learning experience was ‘thrown in the deep end’ without any tangible or constructive support which I found very difficult and stressful so I am determined that our trainees do not have to endure that’.

The supervisor described that ‘they stay in the same department (Private Client) for the full two years. The formal quarterly review meetings allows us to identify gaps and areas to concentrate on over the next three months so that we can monitor their progression (which should be a given as far as we are concerned) and that they have responded to what they have been asked to do. I prefer to use the approach of asking ‘give me an example of a difficulty you have had – how did you resolve it? When did you realise that you needed help? what did you do?’

The PQPR is not that helpful as it doesn't seem to encourage that approach. We also complete the 6 monthly appraisal that we use with the staff with the trainees so as to set some goals and targets in the context of the firm's objectives.

It is all much more structured from when I was a trainee – I was just left to get on with it and ask who I felt would be receptive to help me or look over something for me before I gave it to the partner – he wasn't that interested – kept his door shut all of the time and if a letter was kept back by him then that was a big deal. I really learnt what not to do rather than what to do.'

I feel I need to generate more of a 2-way discussion with the trainee than the quarterly review forms allow. The PEAT2 process does force people to review what they have done and what they have learned from it – allow them to reflect on what they are doing so as to track an improvement.

We do a lot to encourage trainees – sit within the open plan, so that we can sit together and exchange information, allows informal 'how are you getting on?', almost parental role at times plus we also get direct comments and feedback from our clients.

The Carer clinic is a really good opportunity to see if they can 'fly on their own'.

I was an apprentice at a time when firms were a lot smaller so you got to run around after the partner – 'carrying his bag for him so to speak' and on way down to court or to meetings and back would talk about what would happen and then what had happened'.

The trainees confirmed that they were given direct responsibility to deal with the matter and that their supervisors observed them and provided regular commentary and feedback.

In relation to the formal review processes, they valued the opportunity these provide for general comments on how well they are doing and what areas they should concentrate on over the coming 3 months.

Regarding completion of the quarterly PEAT 2 forms, these are generally found to be of limited use other than illustrative of progression through the required learning outcomes that are felt to be repetitive.

Seat rotations are seen as an important part of developing the skills necessary to be an admitted solicitor. The discussions around and the selection of choices provide a useful forum to talk about career progression once qualified and encourage trainees to think beyond simply completing PEAT 2. All the trainees commented that having work experience before starting formal traineeship means that already familiar with office systems and routines (Cashroom and IT) as well as had worked on doing simple drafts, letters etc.

‘In relation to the development of professional judgement, it is not as such structured but I get a lot of independence here as well as being able to see whole file from start to finish so that I can the effect of what I decided to do – if it worked well and if it didn’t so that I can see the development of my own judgement. Important part is people skills, getting to know the client. Working in open plan means that you are conscious that people are listening to you.

In-house CPD training is good as run within our own department so practical and useful.

Carers' clinics teach you to think on your feet – sometimes have to say that will have to come back to them with an answer.

I have learned how to make a judgment through observation and supported experience - observation is key – I have gained a huge amount about how to make a good decision – before working here, I worked with a single practitioner so worked right in the middle of it at first hand – thrown in at deep end is ok as it is how to learn stuff. There is early pressure now to specialise and I chose this 2 year in the 'one seat' option as I knew this is the area of law that I want to practice in. I am supported here and can talk things through and do get feedback and comments – not judgemental, always constructive. PEAT 2 quarterly reviews appear to be a 'tick box' exercise– I fill in the forms and then my supervisor signs them off – no oversight from the Law Society so can only assume we are completing them ok. It is difficult to show progression every 3 months.

Regarding PEAT2, it is really difficult to fit things into the right box – overlapping and cumbersome at the same time as so fragmented that difficult to put it all together. The 60 hours requirement is good in that you are 'allowed the training time' plus the firm pays for the external provision. Perhaps the 'relevant legal knowledge' section should be more tied to what your job is? Perhaps there should be enhanced learning outcomes for year 2?

'Two years in one department means that I can develop more incrementally, can see my own development, am expected to take personal responsibility and allows people in the department to see that I can take increased responsibility and be responsible for my own clients.

For example, when my supervisor went off on maternity leave, people seemed comfortable that I kept handling the work myself.’

Positive learning elements

Trainees are given direct client contact and personal responsibility from the start of their training contract as the firm has already identified their performance potential and fit within the department. This is achieved by:

- employing future trainees to work with the firm before and during their DPLP allows them to feel more confident about their career choice as well as learn to use office systems and procedures in advance of starting their formal traineeship, and
- recruiting trainees who have prior para-legal experience

Working in open plan teams allows trainees to observe and hear senior people speak to clients and colleagues at the same time as being able to ask questions if they need help and to talk through options and choices

Key developmental methods identified by trainees

- Trainees feel that being actively encouraged to take on client responsibility shows that more senior people have confidence in them which helps them incrementally develop their judgement
- Being involved in whole matter/transaction and being able to see it all through allows trainees to see the impact of their own decisions and actions which helps them build confidence that their own judgement call was correct
- Allowing the trainees to stay in the same department and introducing ‘advocacy skills’ in Year 2 with direct exposure to

appearing in court in the context of their acquired knowledge of the relevant law enables them to be more confident about learning new skills

- The work they do at Carers Clinics offers trainees the opportunity to test their confidence and ability to ‘think on their feet’

Key developmental methods identified by more senior people

- Ensuring that supervisors are always accessible so that a trainee can come and get help and advice right away as they are dealing directly with the firm’s clients
- Getting to know that they have the right attitude before we decide to offer them a traineeship

Case Study 6 Solicitors

Details of firm

Long established Scottish law firm with offices in Edinburgh and Glasgow providing legal services to businesses and individuals including litigation, employment, family, commercial and residential property, corporate and intellectual property, 90 partners, 550 qualified staff, 35 trainees.

Interviews were held with the Training Partner and HR Director, supervisors (2) and trainees (5) in relation to the development of professional judgement and the learning support provided by their TCPD programme and PEAT 2 processes. A draft list of questions was submitted for approval to the Training Partner and agreed and circulated in advance of the interviews. Contemporaneous notes were taken of each interview.

Culture and approach

The firm has obtained Law Society of Scotland accreditation for its Trainee CPD (PEAT 2) provision. The firm see their trainees as having a job to do in the firm and as a result wanted to ensure that their training was directly relevant to the culture, systems and approach taken to client service delivery. The firm provides a formal Induction as well as In-house TCPD programme of training in specialist topics and skills which every trainee requires to attend. They also send trainees on secondment to key clients (banks and financial services. The introduction of a formal Trainee Court Rota for routine court work is allows even first year trainees (prior to being able to obtain a restricted practising certificate in

year two) a way to develop confidence in their advocacy skills as well as familiarity with court procedures and behaviours.

The firm took the decision to use three seat rotations of eight months each rather than the usual four of six months as they felt that this allows the trainees to become used to the way the department functions as well as see transactions more through from beginning to end. They also rotate them between the Glasgow and Edinburgh office depending on the seat availability and use secondments to clients, mostly financial services. In addition, it obtained approval from the Law Society to use the in-house forms that they use across the firm for the trainee quarterly reviews rather than the Society complete the formal review processes and forms required by the Law Society for PEAT 2 compliance. They felt that this illustrated that the trainees were part of the firm as well allowing them to look beyond their two year contract to what is required of them once qualified. The trainees confirmed that having these completed documents to review helped them prepare and provide evidence in relation to their job applications for qualified positions.

Findings from the interviews

The Training Partner stated that ‘we very much focus on giving clients the right advice for them – our judgement is what they are paying us for. The trainees here have a proper job to do as we feel that the best way to learn is through practical experience – not just watching other people do it. It was really a business driver to obtain accreditation for our own Trainee training as we wanted a programme that would work for our business. We use secondments to clients to help to consolidate our relationship with them. We focus a lot on the role of lawyers in society and the community so we use this approach in our Ethics training. We

want them to understand how a law firm works commercially as well. It takes time to train people up and we want if possible to keep them on once they qualify. I feel that you can't develop people's judgement by way of a training course – it is rather done by talking things through with their mentor – we do try to build underpinning elements of it into our Ethics courses – ultimately using our judgement is what it is all about'.

The HR Director advised that the supervision of trainees was seen as an important part of the department's responsibilities and that a lot of emphasis was placed on the quality of the in-house training processes. The firm's diary software books trainees onto the TCPD courses and makes sure that they attend and complete their required forms. 'Some of our mentors are naturally better than others – they tend to be nominated by the department heads so I will give them one-to-one coaching if I feel they are needing help in understanding their role plus it will have become part of their own 'personal objectives'.

In relation to the adoption of the firm's review forms rather than the PEAT 2 Law Society ones, she explained that 'we wanted to be able to use our existing PD review forms for the trainees as well as we want them to see themselves as part of our business so we set them targets in the same way plus it helps them see how to progress in our firm in the longer term. If we do feel someone is struggling we do take the time to **put in place additional support**'.

The supervisors confirmed that they sit the trainees as part of the team and close to a senior solicitor so that they have close contact with them. They have regular informal reviews with trainees as well as completing the formal PEAT 2 ones and that having an eight month seat rotation

helps in the allocation of work and in getting them to see things through and that ‘it is important that they are aware of what we want them to achieve and what is expected of them. What makes a good trainee is that they can adapt to their seat even if it is an area that they don’t want to work in and be consistently good and have a good attitude’.

‘So far as we can we want to give them real experience, for example, in relation to litigation skills, the Trainee Rota Scheme and particularly the asset recovery work allows us to offer a substantial case load of low risk work’.

They felt that the ability to be able form good professional judgement was an important part of their role as ‘it is what our clients expect of us - in dispute resolution for example, we use judgement all of the time – that is what we are about in this firm. With the trainees, we want to them learn to exercise independent thought at the same time as recognise when they need to come for help. We encourage them to come up with solutions and then check them out with us rather than expect to be told what to do. We sit close to them so we can hear what they are doing and they can hear us.’

‘I learned through having a good mentor who heavily supervised my case load and could be quite critical. I eventually gained enough experience and confidence to be able to defend my reasoning with her rather than simply just do what she said. That in itself gave me confidence that I knew what I was doing. ‘

‘I learned to develop my judgment ‘on the job’ and it was entirely down to the people that I worked with. In addition, I was given a lot of responsibility when I was a trainee for example, running an important

Court of Session case with Senior Counsel phoning me to discuss what to do.’

The trainees described the way they developed their judgement was being able to sit close to qualified people and hear how they talk to clients and colleagues as well as get immediate feedback and comments from their supervisors – ‘always able to ask questions and encouraged to ask questions although work pressures do affect how much time people have to spare for you’. They described the ‘pressure to early specialise’ and that ‘role modelling is important especially in the first seat as you need to find out how to behave and fit in’ and the importance of ‘buying into the firm’s – this is how we do it culture’. One explained that she had learned from examples – by finding a previous file, reading it and seeing how it all fits in and what need to do. Another in the litigation department explained the value of being taken to consultations with counsel and asked to take the notes and could ‘observe how counsel dealt with the clients and how reacting with them.’

Being put in one department for eight months really helped them gain confidence in the way work was done and especially in the last two months, were able to feel that they were able to contribute. ‘Some seats give you more client exposure than others, for example, in Private Client you are given 30-40 files at a time, handling wills, Powers of Attorneys and executries and run them yourself – managing your own workload and feel like a lawyer with the client phoning you up and asking you questions and you have to give them replies so you better understand what you are doing’. ‘In the employment department I got to take a whole file through to tribunal and final settlement’. One trainee had been sent on a secondment to a bank client and described it as ‘a great experience to see how large organisations operate and really helped my

understanding of their business and risks’ and that still was given the time to come back to the firm to do the TCPD in-house training sessions.

They felt that they developed their judgement through being given direct responsibility for a client file or piece of work and not just do a piece of research and write a legal opinion on it:-

- ‘It’s good to know that your colleagues have faith in you’
- ‘Your judgement comes with experience – you begin to recognise what is acceptable –for example in personal injury the first time you get an offer from the other side, you check the cases and the law, and then you learn from working on client files what is a ‘good offer’.
- ‘in commercial property, I had to take a lease through to completion – it was quite a complicated transaction with a difficult client and there were a number of hitches so I was pleased with myself that I managed to sort everything out and was able to close the deal’.
- ‘You do feel you come out as a ‘solicitor’ and are ‘ready to practice’.

The content of the firms in-house TCPD was described as very good covering ethics, how the law works in practice, client care and complaints. The review processes in PEAT 2 were described as a useful discipline rather than developmental in themselves but that ‘you are given feedback on how you are doing and we do have good supervisors so does boost your confidence’. ‘Every three months is too repetitive and out of alignment with 8 month seat rotations and difficult to find new things to flag up to use and come up with examples’.

Positive learning elements

The TCPD programme is well structured and allows trainees to recognise and embed their learning on each of their three seat rotations (eight months in each).

Key developmental methods identified by trainees

- The use of the Trainee Court Rota for routine court work is seen by the trainees as a valuable part of developing confidence in their advocacy skills as well as familiarity with court procedures and behaviours.
- Working in open plan teams allows trainees to observe and hear senior people speak to clients and colleagues at the same time as being able to ask questions if they need help and to talk through options and choices
- Trainees feel that being actively encouraged to take on more responsibility shows that more senior people have confidence in them
- Being involved in whole matter/transaction and being able to see it all through allows trainees to see the impact of their own decisions and actions which helps them build confidence that their own judgement call was correct
- Spending part of their training period on secondment provides trainees with the opportunity to observe how in-house lawyers operate as well as build their understanding of what clients expect from their professional advisors
- Providing specific practical training skills sessions (for example, Negotiation) allows trainees to think about these in the application of these core skills in a variety of contexts

Key developmental methods identified by more senior people

- Having them in the department for eight months helps to convince people that it is worth taking the time to explain things to them properly and fully
- Having someone who is enthusiastic and willing even if they don't want to choose this specific type of work as a career is important and makes a difference when you are asked to consider them as being kept on after their traineeship finishes

Case Study 7

Details of firm

Long established Scottish law firm with offices in Glasgow and Edinburgh providing legal services to businesses and individuals including litigation, employment, family, commercial and residential property, corporate and intellectual property. These services are delivered by departments within the firm. Size: 18 partners, 60+ staff and 8 trainees.

Interviews were held with the Training Partner, supervisor (1) and trainees (3) in relation to the development of professional judgement and the learning support provided by their TCPD programme and PEAT 2 processes. A draft list of questions (Appendix 1) was submitted for approval to the Training Partner and agreed and circulated in advance of the interviews. Contemporaneous notes were taken of each interview.

Culture and approach

The firm has always grown organically and has resisted approaches to merge with other Scottish firms or firms from south of the border. Most of its current partners started with the firm as trainees. It has a number of long established clients and wants to ensure that it can sustain their loyalty to the firm despite increased competition in the market. It offers its trainees four seat rotations across its departments and both offices.

Findings from the interviews

The Training Partner described that the firm was known for providing practical advice to its clients with its partners being the main point of contact and delivery. He explained that ‘we do more than simply present

options to our clients – we think it is important to provide practical advice and we are not keen to go down the route of getting bigger and losing the sense of our personality. We also are not prepared to drop our prices – when we tender for work, we set our bottom line and are not prepared simply to ‘buy’ work at any price. We have had a ‘good recession’ in the sense that we have weathered the storm – partly because a number of our partners took the chance to ‘retire’ so we were able to reduce drawings yet retain the clients. That has been our main priority – not losing these clients just because the person they knew has left – we have emphasised that we get our sleeves rolled up and get on with getting results for them’.

He explained that they used to take on more trainees then they have now but they cut back on numbers, not because of costs but because the property side of the business was down in activity, they felt that they could not give them enough real work to do, particularly in relation to residential property. They offered summer placements for law students which helped them select who they wanted to offer training contracts to. They provided trainees with an induction into the cashroom and IT systems and then rotated them through litigation, corporate, private client and property over both Glasgow and Edinburgh offices. They have not sought for accreditation of their in-house training for trainees as there was not enough of them to make it cost-effective as well as they felt that allowing them to go out and meet other trainees would be worthwhile, as well as allowing to select TCPD providers that are local to which office they work in. The 20 non-accredited hours are easy to achieve as each department runs at least 2 lunchtime training sessions a year plus what is covered by the Induction and IT training sessions. The supervisors are usually senior solicitors or Associates as they have more time than the

partners have to train the trainees and they are given the trainees as their 'assistants' so it left up to them to allocate their work and review their performance.

The supervisor had started with the firm as a trainee and as a result, felt that he could remember what it was like to be starting out. He described that as there is only two trainees (one first year and one second year) in the department at a time it is easy to split the work between fairly basic research and drafting and more direct contact with clients and other firms. He felt that it was sometimes difficult to get a trainee to see a whole transaction so he encouraged them to spend time reading files to get a feel for how a transaction flows as well as examples of where problems can arise. The PEAT 2 quarterly reviews are completed by the supervisor and as they allocate and oversee their work there is always plenty to talk about. He commented that it was difficult to assume what level a trainee could be trusted with as everyone is different and some seem 'not to see the whole picture' yet other so. 'You can't assume that because the trainee is a Glasgow graduate he or she will automatically be better than a Dundee one for example. This means that it was a question of keeping a close eye on what they were comfortable with and what they needed help with. The most common problem was written communications and legal drafting'.

He felt that 'if we are not offering clients' our judgement, then we become mere theorists'. Regarding developing his own judgement, he felt that he had been well trained by the firm and had been able to learn a lot from senior people who were happy to spend the time to explain things to him. He felt 'part of the family here' and was more than willing to do the same for new people starting out especially given that traineeships are so hard to find now. He explained that one important

element of developing judgement was the ability to have the courage to stand up to clients as well as more senior people and that the ability to exercise good professional judgement is what distinguishes the really talented people.

The trainees advised that they enjoyed working with the firm and that everyone was approachable and helpful to them and that working in open plan meant that ‘you feel part of the team and can hear what is going on around you’. In relation to developing their own judgement, some of the supervisors liked to keep a tight control on what they were doing, others were more laid back. Some of the in-house department training sessions were better than others – ‘it depends on who was giving it but it is good to be kept up to date with changes in the law’. ‘The seat rotations allow you to see areas of the law that you had not enjoyed at University but in practice are very different.’

They felt that the external TCPD courses ‘can be a bit hit or miss – sometimes it was difficult to find ones that fit the PEAT 2 Learning Outcomes and within the time allocations that you needed to do them in – for example, Ethics had to be done between months nine and fifteen for some reason’. All agreed that it was difficult to come up with something new to say every three months so ‘it becomes a bit laborious trying to find something to put it’. In regard to the ‘log activity, it was easier just to keep a folder and put things in it to go back and refer to’. They also commented that each department tended to take a different approach to how things were done and again there were different styles of people between the Glasgow and Edinburgh offices.

Key developmental methods identified by trainees

- Working in open plan teams allows trainees to observe and hear senior people speak to clients and colleagues at the same time as being able to ask questions if they need help and to talk through options and choices
- Pleasant and supportive working environment in general
- Working in both the Glasgow and Edinburgh offices offers exposure to other ways of working with clients

Key developmental methods identified by more senior people

- Being able to have trainees to work within earshot so can overhear what they are saying to clients etc. over the phone

**Appendix 7 Case studies based on interviews with law firms
employing trainees**

England and Wales

- **Case Study 8 Solicitors**
- **Case Study 9 Solicitors**
- **Case Study 10 Solicitors**

List of interviews completed (9 individuals)

	Training Partner/ HR Director	Supervisors	Trainees
English Case study 8	1	1	2
English Case study 9	1	(1)*	1
English Case study 10	1	1	1
Totals	3	(3)* 2	4

* Training Partner is also the supervisor

Case Study 8 Solicitors

Details of firm

General service firm with 3 offices in NW England, 11 partners, 40+ staff, 2 trainees and one para-legal (who will be offered a training contract).

Interviews (telephone) were held with the HR Director and 2 trainees in relation to the development of professional judgement and the learning support provided by the SRA processes. A draft list of questions was submitted for approval to the HR Director and agreed and circulated in advance of the interviews. Contemporaneous notes were taken of each interview.

Culture and approach

They see themselves as firm that offers excellent value for money and uses Lexcel, the Law Society's Quality Award to ensure internal consistency across the business. It offers both business and personal client services and likes to emphasise its pro-bono commitment. It has welcomed the opportunity to make non-lawyers part of the management team with the appointment of their HR Director who comes from a HR background. It recruits trainees through the route of offering them a para-legal six month contract after having them in for summer placements. It also recruits legal services apprenticeships so as to offer an alternative route to qualification as a solicitor.

Findings from the interviews

The HR Director explained that the firm has invested a lot of time and money in ensuring that its IT systems work effectively so as to reduce

risks and ensure compliance with the SRA requirements. She said that ‘professional judgement is core to the service we deliver to our clients – lawyers need to be able to come up with approach that is appropriate to the client’s needs at the same time as the correct legal course of action’.

In relation to the trainees, they give always place them in the same room as a partner/associate so they can work alongside them – both hear each other and able to ask questions/discuss. ‘We offer them summer placement and then a para-legal clerking position first then we start their traineeship off gently with routine clerical work – we have to have seen something in them that we want to encourage before we offer them a training contract. This allows us to use the option to reduce their formal training period to 18 months as we can sign them off six months earlier because they have worked with us as para-legals. We are seeing that qualifying as lawyers a lot older now – gaps between UG degree, LPC and completing training contract.’ She explained that their formal Training Partner is the Managing Partner but he doesn’t have formal meetings with trainees. She meets with them regularly re their diaries and supervisors and she includes them in the firm’s normal annual appraisals with them (where she can use open questions – how doing? How can you help other people? how can other people help you?).

In addition, she carries out the formal reviews of all the trainees having previously spoken with their direct supervisors as she feels that gives a better overview of their progress rather than having seat supervisors who will only have seen them for a few months and then they move on. She explained that ‘I encourage them to use their weekly Training diary – get them to think about ‘I got that right’ and/or ‘I found that difficult, so what will I do differently next time?’ as well as getting them to do self-

development planning around where will be in 2 years+ from now – she feels that she has to actively encourage them to take responsibility for their own career development and identify the stepping stones they need

She feels that ‘the areas of law rotation (3 elements) required by the SRA are out-of-date as everyone is becoming more specialised – they’ve already specialised through their degree and choice of electives on LPC’. In addition she feels that SRA evidential demonstrations are not that clear and in addition, all trainees have to attend the Professional Skills course which seems abstract and out of the context of the office.

She described that ‘the reflective diary is good if they have someone like me chasing them – I encourage them to use a lot at the beginning so as to build their confidence but it does become more difficult later on to write something new. It is useful to focus on where intensive learning taking place (at the end or beginning of a new seat for example)’.

Her final comment: worth a look at Institute of Legal Executives route to qualification.

The trainee described being ‘thrown in at the deep end from day 1 and being given that level of responsibility means that you have to develop your professional judgement – learn how to handle clients yourself’. She could see the improvement in herself ‘shifting from giving clients basic solutions to now being able to come up with bespoke solutions for each client’. She felt that sometimes there is ‘risk that you do make mountains out of molehills because don’t have experience but that her supervisor is very good and we share an office so can turn round and get help’. She has learned to make a list of what need to talk about and have ‘tray system’ for mail so she can highlight areas not sure about.

She had had CAB experience while she was at University and felt that having that face-to-face time with general public really helped her when started her traineeship as well as helping to build her confidence.

She described the 'training contract very very short – coming from an academic background really important to develop your judgement about how to approach a client, what going to say to him – most clients come to see a solicitor because they don't know what their options are so it is essential to develop and offer range of options for each client and help them make best decision for them'.

She is involved in the department meetings every month when the Department Head talks about fee income/targets, workloads etc. and that she also has 1-1 with him/her to set her billing and time recording targets. She had had two seat changes so far – both the private client and commercial sides of the firm and have found it useful to see how different lawyers work.

She explained that the SRA processes were time-consuming and that it was sometimes difficult to know what to put in but that one of the newly qualified people had sent her her training diary so that had been a help. She felt that the formal annual appraisal was useful and that she does have regular chats with the HR Director and can raise something you are particularly worried about.

Her final comment: 'that's the hardest thing – moving from academic theory to positioning it for individual client situation'

The 'para-legal' about to start his formal traineeship with the firm after his six month contract described that he had had previous work experience in some of the large firms and did not 'like' the culture in these firms. He found them aggressive and competitive yet had given a

different message on their website and in their recruitment materials. Having watched what was going on he wasn't sure how much he would learn there as all the trainees sat together and seemed to be having a good social time but not given much exposure to clients and not much real work to do. He said that he is happy with the choice he has made although he 'finds the monthly reviews too much to do with figures/individual fee targets'.

In relation to the question of how developing his personal judgement, he said that he was not really sure what it means? - 'probably mostly by looking at examples of what other people do. Risk management is mentioned a lot - sniffing out when things aren't quite as they seem. Things do crop up and I try to think about the issues myself first of all then discuss with someone and then try to decide. It is important to be able to speak to other people and this is easy to do as I share an office with an Associate who is helpful – perhaps not necessary the same across the whole firm..'

Firm 9 Solicitors

Details of firm

Large regionally spread general service firm with offices across NW England, 11 partners, 100 staff, currently has 2 trainees

Interviews (telephone) were held with the Training Partner (who also directly supervises trainees) and one trainee in relation to the development of professional judgement of their trainees and the learning support provided by the SRA processes. A draft list of questions was submitted for approval to the Training Partner and agreed and circulated in advance of the interview. Contemporaneous notes were taken.

Culture and approach

The firm has a culture of successful mergers and as a result has spent some time determining and defining its values and culture. It takes up to four trainees at a time starting them on a six months contract as para-legal and offers them the opportunity to train across all of the departments and various local offices. They feel that the quality of graduates applying for training contracts to them is very high indeed which makes it difficult to choose between them in relation to their cvs so they prefer to take them on on an initial six month para-legal basis to see how good they are going to be in practice, rather than simply on their exam results.

Findings from the interviews

The Training Partner who is also the **supervisor** for both trainees explained that the exercise of professional judgement is ‘ultimately that is what the job is all about .. we’re professional advisors so have to make

a judgment about what advice is relevant to particular situation and that client plus a lot of non-legal factors need to be brought in when advising the client – no single black or white answer (Note: he offered an example of Barclays Bank IT problems stalling money transfer when 2nd in a long chain). We need always to consider the bigger aspects of professional judgement and not simply respond to the immediacy of the time pressure - so overall it is essential to make trainees think about the client situation and wider issues involved. We develop judgement of our trainees by labelling the point when a particular issue or situation arises – explain why go down a particular path and use it to explain by examples I have dealt with and stories from others in the firm – a kind of ‘oral history’ and illustration’. The examples we use tend to be about ‘risk’ first of all and then widen the discussion out to explain that they need to get into that client’s head, how best to get that client to engage and respond, because as a firm we feel that it is really important to get that aspect right. I adopt the approach taken when I am trained by providing a close working relationship with more experienced and senior person – my draft document talked me through it all. I do all of the trainee appraisals where the trainees are asked to talk about examples of their work. Using the eight month rotation structure, they keep their diary up to date. Using the SRA structure of having to work out their progress and where to move next within the practice provides useful feedback mechanisms as well as the discipline of completion of logs which is after all an important element of being a solicitor. The feedback we give them is constant and ongoing and not just saved up for formal reviews. We always look at individual performance and how things are working out for each one. However keeping them on depends on whether we have a qualified job for them and that all depends on market conditions and whether we have a personnel gap because of maternity leave or illness.

He advised that there was no formal training of supervisors and that he just picks people he thinks are naturally good at it.

The trainee explained that the firm has a good reputation as being a busy firm with a lot of high profile partners who are known for their expertise. Having to take a para-legal position for the first six months felt a bit of a step down after completing a law degree and the LPC and did feel initially that spent a lot of time doing routine admin. ‘Some of the offices do more expert work than others so it is important to work out which partners you want to impress and push yourself in front of them. Getting seat rotations to suit what you want to do (or think you want to do when you start out) is not that easy as people are generally very busy and not every department seems that keen on taking the time to train trainees. The best way to develop your confidence is to start working on as much client facing work as you can get. The firm splits the work into the two streams of private client and business yet at the end of the day, it’s all about how well you get on with people.

The SRA forms etc. just have to be completed – they take time and having to be assessed every six months is useful enough but generally speaking people let you know how you are getting on’.

Positive learning elements

The firm is busy and growing so it regards the trainees it takes as part of their service supply chain and can give them the opportunity to work alongside ‘busy’ practitioners. Because of its regional spread, individual offices are still small enough for trainees to get direct exposure to client work as well as see how different partners and departments function.

Firm 10 Solicitors

Details of firm

Full service firm based in 3 offices in the North of England, 11 partners, 50+ staff, 3 trainees. Has a reputation for delivering high quality work with a number of the partners have visible profile in key sectors and business across the region.

Interviews (telephone) were held with the Training Partner, one supervisor and one trainee in relation to the development of professional judgement of their trainees and the learning support provided by the SRA processes. A draft list of questions was submitted for approval to the Training Partner and agreed and circulated in advance of the interview. Contemporaneous notes were taken.

Culture and approach

The firm sees itself as well placed to respond to the changes that the legal services marketplace is facing and they are keen to be seen as dynamic and entrepreneurial. They place emphasis on team working and internal communications. They provide a wide range of services, split into private client and business streams and within that individual departments such as family, commercial property and employment.

Findings from the interviews

The Training Partner explained that the firm always takes them on for 1 year as a para-legal before offering them training contract as looking for cultural fit – ‘We want them to want to be the best and look for as

much learning as they can plus be client focussed – they need to be able to transfer learned law into what client wants.

Because of shift of the SRA regulations to being ‘outcome focussed’, the end result is that the focus of developing judgement tends to be on ‘risk’. In relation to training the trainees, the style of each department is different – for example, in corporate we tend to use direct contact with a partner and shadowing and then if we can we manipulate the 3 areas of law requirement to keep trainees in that department as it takes time to train them up to generate fees and even from trainees there is a resistance to being sent to work in a department with the type of work they are not interested in qualifying into.... Yet conveyancing is very, very hands-on with clients and because of cost/business model in this department we have no qualified lawyers so the trainees do the same work as para-legals/legal executives. In family legal aid work, this is where people’s judgement shines or otherwise.

We simply do what SRA requires nothing more (e.g. appraisals every 6 months) plus we do do an Induction – we are very hands on with them, plenty of work to be done so they get lots of practical experience. They will get daily commentary and feedback on their work and can come to us if they are stuck – we also talk about things that ‘with hindsight, I could have handled such and such better. One good way is to talk to them about what doing and what has happened sitting beside you when driving in to court and/or client meeting. At the start of each of their seats we set them technical and client facing objectives plus personal development ones as well. We get them to do dummy work on a file initially and give them feedback on how they have done – compare and contrast their answer with what an experienced person says or thinks. By the last seat, they will have direct exposure to clients. We are a full

service firm and we expect them to contribute from day one. We don't want them to live in the silo of that type of work or department – we want them to see the wider picture and be able to transfer learning across as judgement involves factors from a number of different disciplines.

We want them to develop a wider 'commercial' picture - professional judgement is brought about by experience and direct exposure on the job. We want them to do more than just research the law – we want them to apply the law in the context of that client. We want to appreciate that each client has a different appetite for risk. Each Head of Department talks to his or her team every month about current workloads, fee targets etc. We also 'buddy them up with second years' to help them get answers to routine questions. I developed it mostly by shadowing more senior people as well as through direct exposure on the job. We use the SRA templates to capture what trainee is achieving as well as give them day to day feedback on what they are doing. We find this easy to achieve as we all sit in an open plan office and can hear what other people are saying on the phone.'

She advised that they do not provide any specific training for supervisors (or buddies) – 'some have come from bigger Manchester or Liverpool firms where they may well have had formal training in delegation and team leading, but we don't offer anything like that'.

The supervisor confirmed that trainees are seen as part of the team and explained that 'I try to get them to get used to asking 'what if' questions – I like to take them to tribunal hearings so they can see what happens there and talk to them in the car on the way there and back – about client expectations, what are manageable, what are reasonable. I also get them to speak to clients who I know are happy to spend time explaining what they expect from their legal advisors and what they value to let them

understand what makes good client service. As I said we see them every day so we can see where they need more help and more practice, for instance in drafting, and this gives us something to talk specifically about how we went to see them improve and something ‘real’ for them to be doing.

I suppose that I developed my own judgement the same way as everyone else of my age – by watching what more experienced people were doing. It was a lot easier then because solicitors were generalists – perhaps too much so with the result that people dabbled in areas that they shouldn’t have – I can think of quite a few problems that arose because partners tended to work as individuals rather than developing specialisms so that if one of their clients needed something done, for example, selling a business on retirement, then the partner just went ahead and did it. Sometimes as a result I got handed a file that I didn’t know what to do with and the partner didn’t know either yet kind of expected that I should know as I had just got my law degree so I should have known what the law was’.

The trainee confirmed that the firm provided a good induction into the way things are done and the approach taken. He felt however that ‘I have not really had ‘two years’ experience. There is as a lack of appreciation in general terms of what a trainee is capable of in some departments – for example, in one seat I did little more than ad hoc tasks plus one of the solicitors went off on maternity leave with the result that everyone seemed too ‘busy’. I would learn a lot more if the firm had a better understanding of what I am capable of as I have worked for a number of summers in a ‘call centre’ so developed a lot of understanding of how to handle disgruntled clients. The SRA processes mean that you have a review every six months but sometimes there is not a lot to say

and sometimes people were too busy to do it properly so ‘just get it done’. The buddy system doesn’t really work as it is easier to speak to one of the support staff if you are stuck with something routine.’

Appendix 8 Trainee Focus Groups

List of focus groups completed (13 individuals)

	Organisation	Trainees
Trainee Group Glasgow	Trainee and Newly Qualified Society	5
Trainee Group Edinburgh	Scottish Young Lawyers Association	8

Trainee and Newly Qualified Society Glasgow 5 trainees

4 of the trainees worked in private practice and 1 in a local authority legal department.

The researcher explained the purpose of the research and placed considerable emphasis on the confidentiality and anonymity of the data obtained.

In relation to the question about how they had developed their professional judgement, the group discussed this and offered comments that varied between ‘being flung in at the deep end’ and ‘not sure that I actually did during my traineeship I felt that I got no real experience of being given my own files or responsibility’. The local authority trainee commented that the support network is there but that are mostly left to get on with it. One of the trainees did not do her law degree straight from school so had previous experience of working in a Call Centre which she explained was of much more value than the DPLP in relation to working with people and handling difficult and stressful conversations.

Most commented that working in an open plan office was a great help in developing their understanding of how to handle situations as ‘you can hear people on telephone calls and the words they use to explain things to clients and the other side – it’s really useful as you think ‘ I must remember that phrase’.

Most commented that there was not enough emphasis on ‘proper’ role modelling – ‘for example, it would really have helped me to have shadowed people appearing in court a lot more before I had to do it – some Sheriffs seem to enjoy tearing people to bits so it would have helped to have seen how other people actually coped with that... yet with court work the only way to develop your skills is to actually stand up and do it – learn by doing and being pushed out of your comfort zone’.

They agreed that role modelling and the value of supervisors varies with the person – ‘some people are very patient and explain things properly, others are very unapproachable and can be quite damaging in relation to developing your confidence’.

They suggested that perhaps an 8 months rotation would be better – ‘as it takes quite a while to settle in and work out what you are supposed to be doing and just when you get a hang of it, you have to move to a new seat and a completely different type of work’.

Scottish Young Lawyers Association Edinburgh 8 trainees

6 of the trainees worked in private practice and 2 in an in-house legal department.

The researcher explained the purpose of the research and placed considerable emphasis on the confidentiality and anonymity of the data

obtained. All of the trainees worked in ‘large firms’ or in in-house legal departments in financial services organisations in Edinburgh. Those in private practice completed seat rotations in different departments with those working in-house also given exposure to different areas of legal work, including compliance with external regulatory requirements and litigation. Some commented that they would like to have been given more responsibility – ‘I am not really given any chance to develop my judgement as I don’t have enough close contact with experienced people and if it is an ‘easy’ question, newly qualified assistants will just tell you what to do and if you ask why, they don’t either know or don’t have the time (or inclination) to tell you. If it is a more difficult question, I have had assistants saying to me ‘don’t bring it to me – I don’t want it on my desk’. ‘I qualify in a few months and don’t know yet if I am to be kept on. I worry about applying for a ‘newly qualified’ job as I feel that I have limited experience and direct responsibility so I am not confident that I really know why I am doing something’. ‘Actually they don’t seem to know what I am capable of. I do a lot of work that I could have done when I had just left school – photocopying, archiving and scanning documents for files for example’. They described that the PEAT 2 review processes were repetitive with some supervisors paying lip service to completing them – ‘you can spend a lot of time worrying about what to use as examples, especially in relation to the Ethics ones and then your supervisor simply signs off what you have done without any discussion’.

Appendix 9 Primary research into the UK legal professional bodies, regulators and related organisations

List of interviews (11 people)

<u>Organisation</u>	<u>Individual</u>
Law Society of Scotland	Director of Education
Law Society of Scotland	Director of Regulation
Marsh, agents for Master PI Policy	4
Scottish Legal Complaints Commission	1
Scottish Solicitors Discipline Tribunal	1
CILEx	1
The Law Society	1
SRA Education and Training Unit	1

Section 1 Scotland

In relation to the specific task of this research the only overt mention of judgement in relation to the undergraduate law degree is found within the ‘General Transferable Intellectual Skills section 1’ which contains the title ‘Analysis, Synthesis, Critical *Judgement* and Evaluation. This covers:

- Recognise, analyse and rank arguments and evidence in terms of relevance and importance by:
 - managing volume of legal sources and select key material to construct written or oral answers to a problem
 - identifying the legal problem from information provided
 - addressing problems by reference to relevant material

- bringing together and integrating information and materials from a variety of different sources
- acknowledging ranking of sources and relative impact in context.
- application of the law and *problem-solving* in a legal context
- presenting arguments for and against propositions
- Be aware that arguments require to be supported by evidence, in order to meet legal requirements of proof by:
 - showing awareness of the need for evidence to support arguments
- Apply knowledge and analysis
 - in a legal context
 - creatively to complex situations in order to provide arguable solutions to concrete problems by presenting a range of viable options from a set of facts and law
- Think critically and make critical *judgments* on the relative and absolute merits of particular arguments and solutions (p25/26)

It would appear therefore that given its inclusion under a grouping that includes analysis, synthesis and evaluation and combined with ‘thinking critically’ that it appears that ‘critical judgement’ is being considered in relation to its cognitive interpretation only.

In relation to the PEAT 1 and 2 Learning Outcomes, ‘Core Outcomes’ are specified as the outcomes to be achieved in the areas of Professionalism, Professional Communication and Professional Ethics and Standards and ‘Mandatory Outcomes’ cover the core curriculum of

(i) Conveyancing, (ii) Private Client, (iii) Litigation, (iv) Business, Commercial, Financial and Practice Awareness, and (v) Tax.

The only overt mention of judgement is in (1) the Core Outcome of Professional Communication under the sub-heading ‘professional relationships and team working’, under the sub-sub -heading of:

Work effectively as part of a team

Exercises sound judgement as to when to refer issues outside own competency level to someone more senior

and (2) under the Heading of Business, Commercial, Financial and Practice Awareness under the sub-heading Practice Awareness and Work Management under the sub-sub -heading of:

Can manage time and risk capably in legal transactions/matters

Exercises effective judgement regarding the effective use of his or her time

Exercises effective judgement in respect of realistic timescales for completion of tasks and delivery of objectives.

Following completion of this analysis, primary research was carried out with **the Director of Legal Education of the Law Society of Scotland** to explore her views in relation to the relevance of the development of professional judgement. Key themes included:

- Do you think the development of professional judgement is important in legal education?
- If so, is it explicitly mentioned?
- If not explicit, how it is developed?

- What do you see as the most important challenges facing the profession at the moment?

Her view was that ‘developing professional judgement is important – there is no overt mention of it in the new PEAT 1 or 2 Learning Outcomes but we have put professionalism into the core of both as you know. Now that you mention it, we did not really consider it specifically in all of our re-work of these – I suppose we took it for granted. I think that the only mention of it is where talk about ‘exercising sound judgement’ about when to refer work to other people and ‘effective judgment’ in BCFP awareness (d) but we do expect trainees to be able to demonstrate elements of judgment such as having an understanding of external business contexts and identifying risks and benefits.

Perhaps it is more talked about by our Regulation Department in relation to Conduct complaints or by Marsh (PI Master Policy insurers) when dealing with claims?

The market is still very difficult – training places are down again this year – the number of students doing the DLP is also down with the loss of the grants this year. We’re trying to do as much as we can to help trainees and the newly qualified.’

This interview was followed up through an interview with their **Director of Regulation** about his experience of demonstration of ‘failures to exercise professional judgement’.

‘Professional judgement or rather the lack of it is not defined. Normally results in a claim so worthwhile speaking to Marsh in relation to their experience of these under the Master Policy. Test as far as I know that is still applied is Hunter v Hanley. It seems to me that solicitors look at the

law and then depending on the law, circumstances and the client make an ‘bad decision’ – what they need is both competence in the law and able to ‘know their client’ – what I would call applying practical realism’.

All Scottish solicitors have be insured under the Master Policy (unlike England where they have to place their individual cover in the marketplace). As a result they have an unique overview of the complete picture of PI claims in the Scottish profession. **The Claims Department of Marsh Insurance** as agents of the Master Policy were contacted and they agreed to take part in a group interview supplemented by a telephone interview in relation to the PI insurers’ views on professional judgement in the legal profession.

Included in the interview was a Director of Marsh who deals with the LSS’s Master Policy and two experienced claims managers who have both worked in the insurers for 15+ years each. The telephone interview was with an English barrister who works in-house with Marsh in relation to identify key trends and developing corrective and/or preventative procedures.

In relation to a failure to exercise professional judgement, they stated that apply the test of *Hunter v Hanley* (the principal case law on the matter) and look at the specific ‘act or omission’ (rather than the ‘why’ behind it). In almost all cases, they obtain an expert opinion applying this test as to what a comparably competent professional would have done in those circumstances. They always use experts who have current experience in practice - ‘experts who are not in practice would have no evidential value’ and offered examples of where judges had challenged experts who appeared to be academics rather than practitioners. Changes

in established practice directly affect what would be acceptable (and defensible) judgement such as with profits endowment policies which every conveyancer put in place for domestic house purchasers in the mid-1980s without questioning it.

They stated that ‘practically everything is reduced to a matter of exercise of professional judgement’. They would prefer people to exercise what they described as ‘professional scepticism’ i.e. don’t get too close to your client, don’t believe what people tell you etc. – the principle underlying cause in their view is ‘failure to appreciate a risk’. One of the main ways they have been trying to improve firms’ claims record is to encourage them to adopt checklists and formalise each stage in a transaction. They didn’t see ‘ethics’ as relevant because they don’t look at the ‘why’.

For them ‘every single claim arises from the application or misapplication of professional judgement’.

They felt that with training people could get better at exercising good judgement and referred again to the value of checklists to provide structure and established and accepted practice - one important way to teach this is through stories told by senior practitioners – this set the context as well as illustrated the implications.

One individual explained that he had looked at the profile of claims that have arisen and mapped them lineally on the various ‘cradle to grave’ stages of a transaction and that what he has found that claims cluster around stages/ situations which are not typical/ ‘laboratory conditions’. As a result he thinks that checklists should be used at those key stages so as to minimise people’s tendency at that point not to stop and check:-

*‘Lawyers seem to assume that everything will go well and when it doesn’t they blame the individual, says it’s a one off or that they just got tripped up on some admin issue. Professional judgement happens through the modelling provided by more experienced people –it needs to be **used** to develop through interpretation and to do that needs ‘repeatability’. The ethical part relates feeling part of belonging to that group which makes the person not to want to let people down and sets the parameters of what to do.’*

The Chairman of the **Scottish Solicitors Discipline Tribunal** that deals with such conduct complaints offered that in most cases solicitors are aware of what is the correct standard and behaviour they should apply but that they submit to either financial pressures and/or long association with client(s) results in exercise undue influence/control. They do think about it and then decide to take the risk. What makes it misconduct is making a deliberate choice or recklessness. He commented that in relation to the development of the ethical side of judgement that:

‘the development of mores is the result of observations of your peers and particularly those who are your masters. New entrants seem to have an attitude that ‘I know it all’. Historically it was better as we were trained more generally, now they immediately only work in a small area of practice with the result have no breadth of experience and no context. So for professional judgement, you use 3 things:

- 1. Factual matrix*
 - 2. Your experience and*
 - 3. Apply your mores to it (regardless of financial element).*
- Experience is the deciding factor.’*

The **Scottish Legal Complaints Commission (SLCC)** deals with all complaints relating to Scottish solicitors, referring those determined as relating to conduct on to the LSS to deal with and retaining those relating ‘inadequate professional services’. They advised that they do not have any specific headings in relation to ‘failure to exercise professional judgement’ and that complaints which relate to exercising poor professional judgement are often not upheld as they are harder to establish. They will only uphold them if the solicitor has acted in a way that no reasonable solicitor would have, whereas complaints about delays and/or failure to communicate are more likely to be upheld as they are easier to establish on the facts. Some complaints may well have elements of both i.e. delay and also way exercised professional judgement.

‘I would say a lot of the professional judgment ones relate to court work (both civil and criminal) and what evidence is led, what questions are asked of witnesses, what is lodged as a production etc. Most relating to the questioning of witnesses are ineligible on the grounds that it depends on how a practitioner thinks things are going on the day, how receptive Sheriff seems to be etc. but it really depends on the circumstances of each case.....’.

Section 2 England and Wales

The content of the route to qualification stages is prescribed by the Solicitors Regulatory Authority (SRA) at <http://www.sra.org.uk/students/academic-stage.page>. Other routes available include through the Chartered Institute of Legal Executives which allows work-based learning and achievement of a number of levels of professional qualifications.

The setting of standards in relation to education and training is the responsibility of the **Solicitors Regulatory Authority** which adopts an outcome focussed approach which ‘concentrates on providing positive outcomes, which when achieved, will benefit and protect *clients* and the public’. It has issued a detailed Handbook that includes a prescribed set of Principles and Outcomes:

<http://www.sra.org.uk/solicitors/handbook/handbookprinciples/content.page>.

Analysis of the Learning Outcomes for the academic and vocational stages of legal education disclose that in relation to those required for the ‘qualifying law degree’, General Transferable Skills includes:

- To make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question (<http://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page#schedule-1>)

There is no mention of judgement in those for the Legal Practice Course.

The Law Society’s views were obtained in relation to the development of professional judgment. They confirmed that while there is no overt statement in any of the outcomes about ‘professional judgement’ or a

definition of it, yet it is often an important part of a solicitor's job, for example, as it will be the judgement of the Training Principal as to how each trainee is progressing and amount of direct supervision needed in first few years of practice.

'We have responded in detail to the LETR consultation and we have hopes that some of the changes we want to see will be addressed: for example, the SRA Work-based Learning Pilot approach, as well as a formal requirement to build how to apply ethics in practice into every stage of education and training (full text of response accessed at

<http://www.lawsociety.org.uk/representation/policy-discussion/response-to-letr-discussion-paper-02-2012.>

The **SRA Education and Training Unit** confirmed that the only reference to judgement in the SRA's Principles (SRA 2011) is in Chapter 9 it states 'the importance of not compromising one's professional judgement in relation to fee sharing with third parties'. He explained that their Work-based Learning Pilot in 2009 included in its Learning Outcomes the ability to 'exercise effective judgement in evaluating alternative courses of actions or possible solutions in the light of clients' needs, objectives and priorities' and its subsequent Evaluation Report of the pilot stated that professional standards usually includes 'an assessable specification of judgement, ethics and key values that convey the ethos and level of thinking expected'. In addition, when commenting on the effectiveness of the Portfolio used on the Pilot as an assessment tool it was felt this allowed 'strong confidence on the part of training organisations in the instincts, perceptiveness and good judgement of

professionals involved in training in respect of the relevant qualities of trainees'. It is not however referred to in the knowledge, skills and attitudes required for practice Briefing Paper prepared by the current Legal Education and Training Review.

He advised that they are currently working on a new Competence Framework for Solicitors and are currently doing empirical research into what solicitors actually do in practice and what are the critical factors that impact on the risks involved. This will be developed across the spectrum of each stage of formal and work-based learning. For example, in relation to trainees will reflect the sort of risks they may face:

‘we want them to develop judgement and critical thinking in live situations’ so it is important for employers to recognise that to achieve this they must be given some exposure to direct client responsibility. Our WBL pilot showed the importance of this as well as ‘critical mentoring’ (i.e. developmental constructive feedback and support) to move them up levels of judgement – level 1 very little judgement, level 2 make judgement with support, level 3 make their own judgement. We can’t only focus on processes as we can’t reduce something that is very personal and involves integrity to an arid exercise. As a result, ethics and integrity have to inform their judgement – risk must be understood in that context as otherwise it misses a key element of professionalism. Solicitors (unlike other legal roles) have to be able to make a number of connections between different elements of practice so it is really important that we recognise this.

Our research has indicated that there is a lot of agreement around the core skills of all solicitors – a rounded individual that can act

with integrity as well as recognise connections involved in what client wanting to do. I think we still see ourselves as one profession - my experience of working on the Professional Ethics Helpline was that people were worried about similar things – professionalism and one’s perception of oneself as a solicitor are all pretty well common for everyone still’.

The Practitioner Authorisation and Supervision Manager of the **Chartered Institute of Legal Executives** explained that their work based learning handbook includes the competencies and learning outcomes that applicants are required to demonstrate before admission. These skills will be developed in the workplace and it is for the applicant to demonstrate how they meet each outcome (accessed at: http://www.cilex.org.uk/ips/ips_home/for_cilex_members/qualifying_employment.aspx.) She confirmed that within their Level 3 and Level 6 Professional qualifications, professional judgement is not covered as a distinct skill as they consider that it is a skill that is always exercised through the medium of the law/legal practice or through the use of a specific professional skill. How this is interpreted changes over the levels with students from L3 onwards being expected to apply the law to practical situations. At L6, this application becomes more interpretive, analytical and evaluative and often becomes an exercise in reasoned judgement. The unit specifications are written in a way that reflects this increased focus on analysis and evaluation.

I should also add that CILEx's Professional Skills units at L3 and L6 repeat this process in relation to the key legal professional skills used by lawyers in everyday practice. Undertaking and applying legal research at L3, for example, becomes judging the

nature of a finely balanced response to a practical, complex legal problem at L6. Similarly, understanding good client care behaviours at L3 and being able to demonstrate these becomes at L6 the ability to act with degrees of tact and diplomacy in response to a multi-faceted and complex client situation. These are the ways, then, in which trainee legal executives begin to get to grips with the exercising of professional judgement within legal activity. We are looking for progression for example from interpretation and application to critical evaluation. Client Care and Legal Research are taught and assessed as a discrete Professional Soft skills unit in addition to the technical subject areas.'

Appendix 10 Analysis of the source of the data obtained

Table: Source of the data obtained

√ = positive response and examples provided

N = negative response

FG = Focus Groups

	Case studies										FG	Others
Data obtained	1	2	3	4	5	6	7	8	9	10		
Judgement												
How developing professional judgment of trainees	√	√	√	√	√	√	√	√	√	√		LSS, LS, SRA, CILEx - all √
Why important	√	√	√	√	√	√	√	√	√	√		LSS, LS, SRA, CILEx - all √
How professional judgement developed – experience of supervisors	√	√	√	√	√	√	√	√	√	√		LSS, Marsh, SLCC, Scottish Solicitors Discipline Tribunal, LS, SRA, CILEx - all √
How professional judgement developed – experience of trainees	√	√	√	√	√	√	√	√	√	√	√	
PEAT 2 processes												
How use PEAT 2 processes	√	√	√	√	√	√	√	SRA	SRA	SRA	√	LSS, SRA, LS - all √

How useful	N	N	N	N	N	N	N	N	N	N	N	N	
What support development of	√	√	√	√	√	√	√	√	√	√	√	√	
Gaps and omissions	√	√	√	√	√	√	√	√	√	√	√	√	
Additional support developed and why (detailed in sub-table (a) below)	√	√	√	√	√	√	√	√	√	√	√		
Assessment and explanation of trainee progression	√	√	√	√	√	√	√	√	√	√	√	√	
Training provided to supervisors to support trainee development	N	N	N	N	N	N	N	N	N	N	N	N	
Additional data provided (detailed in sub-table (b) below)	√	√	√	√	√	√	√	√	√	√	√	√	

Sub-table (a) Descriptions of additional support provided by employers

Additional data	1	2	3	4	5	6	7	8	9	10	FG	Others
Formal Trainee Induction	√	√	√	√	√	√	√			√		
Use six monthly seat rotations	√	√	√	√		√ *	√	SRA *	SRA *	SRA *	√	

Use secondments		√	√	√		√	√				√	
Use firm-wide appraisal process		√		√	√	√						
In-house skills training sessions		√	√		√	√						
HRD has 'mentor overview role'	√		√					√				
Use open plan working	√	√	√	√	√	√	√				√	
Law clinics, legal advice agencies, CAB		√	√		√							
Recruit as para-legals								√	√	√		

*8 monthly

Sub-table (b) Additional data provided by case study interviews

Additional data	1	2	3	4	5	6	7	8	9	10	FG	Others
LSS accreditation	√	√	√	√		√		SRA	SRA	SRA		
Trainee set chargeable time targets	√	√	√	√	√	√	√	√	√	√	√	
Trainees describe value of 'knowing right person' to go to for help	√	√	√	√	√	√	√	√	√	√	√	
Trainees describe value of 'shadowing'	√	√	√	√		√	√				√	